

# Morgantown Planning Commission



## REGULAR MEETING PACKET

Thursday, October 8, 2020

6:30 p.m.

By Electronic Means

### Planning Commissioners:

Peter DeMasters, 6<sup>th</sup> Ward  
President

Carol Pyles, 7<sup>th</sup> Ward  
Vice-President

Sam Loretta, 1<sup>st</sup> Ward

Tim Stranko, 2<sup>nd</sup> Ward

William Blosser, 3<sup>rd</sup> Ward

Bill Petros, 4<sup>th</sup> Ward

Michael Shuman, 5<sup>th</sup> Ward

AJ Hammond, Admin.

Ronald Dulaney, City Councilor

### Development Services Department

John Whitmore, AICP, Interim

# Planning Commission Electronic Means Meeting Announcement

## Confirming Member Access:

As a preliminary matter, this is **Morgantown Planning Commission President Peter DeMasters**. Permit me to confirm that all Planning Commissioners and persons anticipated on the agenda are present and can hear me.

- Planning Commissioners, when I call your name, please respond in the affirmative.

*State each members' name:*

- Vice-President Carol Pyles
- Commissioner Sam Loretta
- Commissioner Tim Stranko
- Commissioner William Blosser
- Commissioner Bill Petros
- Commissioner Michael Shuman
- Council Member Ronald Dulaney
- Commissioner AJ Hammond

- Staff, when I call your name, please respond in the affirmative.

*State each staff members' name:*

- Chris Fletcher, Director of Development Services

## Introduction to Electronic Means Meeting:

Good Evening. This meeting of the **Morgantown Planning Commission** is being conducted by electronic means consistent with the West Virginia Open Governmental Proceedings Act and the guidance of the West Virginia Ethics Commission due to the current State of Emergency given the outbreak of COVID-19.

In order to mitigate the transmission of the virus and reduce risk of COVID-19 illness, we have been advised and directed to suspend public gatherings. In keeping with that direction, and the authority provided by the Open Governmental Proceedings Act and the Ethics Commission guidance allowing the conduct of public meetings by electronic means so long as the public is able to observe the meeting, this meeting is being conducted by remote electronic participation and in-person attendance by the public is not permitted.

This meeting will include a public comment portion concerning matters not on the agenda and public hearings for each of the cases listing on this evening's agenda. Members of the public will be permitted to comment during these portions by submitting comments in writing or by speaking during their designated time, if they have signed up to do so prior to the start of the meeting. Even if members of the public do not provide comment, participants are advised that people may be listening who do not provide comment, and those persons are not required to identify themselves.

For this meeting, the **Planning Commission** is convening by **Cisco Webex video and telephone conference** as posted on the City's Website identifying how the public may join.

Please note that this meeting is being recorded, and that some attendees are participating by video conference.

# Planning Commission Electronic Means Meeting Announcement

Accordingly, please be aware that other people may be able to see you and your video feed, and that you take care not to “screen share” your computer. Anything that you broadcast may be captured by the recording.

All supporting materials that have been provided members of this body are available on the City’s website with the Planning Commission meeting packet unless otherwise noted. The public is encouraged to follow along using the posted agenda.

## Meeting Business Ground Rules

Before we turn to the first item on the agenda, permit me to cover some ground rules for effective and clear conduct of our business and to ensure accurate meeting minutes.

- Please remember to mute your phone or computer when you are not speaking.
- Please remember to wait to be recognized by the President before speaking and to speak clearly and in a way that helps generate accurate minutes.
- For any response, please wait until the President yields the floor to you and state your name before speaking.
- If Planning Commissioners wish to engage in colloquy with other members, please do so through the President, taking care to identify yourself.

The Planning Commission conducts business in the following order:

- (1) There will be a general public comment portion when anyone who wishes to address the Planning Commission may do so, but only on matters that are not on the agenda. I will first read, or have read, all written comments submitted, and will then review the list of public commenters who have signed up by the meeting start time. Once I have a list of all public commentators, I will call on each by name. All speakers will be limited to five (5) minutes. If members of the Planning Commission have any questions of the speaker, that time will not be counted toward the speaker’s five (5) minutes. Public speakers must state their name and address for the record. Speakers are notified that irrelevant comments or comments of a personal nature or personal attacks may result in the speaker forfeiting their opportunity to participate in the general public comment portion.
- (2) We review, amend, and approve minutes of the previous meeting.
- (3) We consider any Unfinished Business from previous meetings.
- (4) We move on to New Business items. First, we introduce the item and the Planning Division representative presents the Staff Report.
- (5) Next, we ask the petitioner to make a presentation. Planning Commissioners may ask the petitioner questions at that time. To ensure an accurate record and to aid the preparation of meeting minutes, presenters and Planning Commissioners must first be recognized by the President and state your name before proceeding.

## Planning Commission Electronic Means Meeting Announcement

- (6) I will then open a Public Hearing to hear testimony in support of, or in opposition to, the request. Rules regarding public testimony are as follows:
- (a) I will first read, or have read, all written comments submitted, and will then review the list of public commenters who have signed up by the meeting start time.
  - (b) Once I have a list of all public commentators, I will call on each by name. All speakers will be limited to five (5) minutes. If members of the Planning Commission have any questions of the speaker, that time will not be counted toward the speaker's five (5) minutes.
  - (c) Public speakers must state their name and address for the record. All comments must be addressed to the Commission. Speakers are notified that irrelevant comments or comments of a personal nature or personal attacks may result in the speaker forfeiting their opportunity to participate in the public hearing.
  - (d) If there is a large number of speakers, including many who are part of groups or organizations, I may, to avoid repetitive comments, elect to ask for a representative to speak on behalf of the group or organization.
  - (e) I may elect to recognize the applicant/agent at the end of the public hearing to provide rebuttal or additional comments, which will be limited to five (5) minutes. If members of the Commission have any questions of the applicant/agent, that time will not be counted toward the applicant's/agent's five (5) minutes.
- (7) After all testimony is heard, I will declare the Public Hearing closed and no further public comment will be permitted. At that time, no one in the audience may speak again unless a Planning Commissioner asks a question. If someone is asked a question, they must first be recognized by the President and identify themselves once again before answering.
- (8) Next, the Planning Commission will discuss and take action on the application.
- (9) Because this public meeting is being conducted by remote electronic participation and to ensure accurate meeting minutes each vote taken during this meeting will be conducted by roll call vote.
- (10) Uncivil, unruly, and/or disruptive behavior at any time during this meeting is prohibited and will result in removal from this public meeting.

Thank you for your consideration and respect for these proceedings and the opinions of all meeting participants.



# MORGANTOWN PLANNING COMMISSION

October 8, 2020  
6:30 p.m.  
By Electronic Means

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Michael Shuman, 5<sup>th</sup> Ward

Ronald Dulaney, City Council

AJ Hammond, City Admin.

*If you need an accommodation, please contact 304-284-7431 or TDD 304-284-7512*

City buildings remain partially closed to the public to protect public health during the COVID-19 pandemic. Personal attendance at this meeting will not be permitted. The public may participate in the public portions through the following Cisco WebEx videoconference access methods:

Meeting Link: <https://cityofmorgantown.my.webex.com/meet/cityofmorgantown>

Meeting Number: 793 734 477

Phone: 408-418-9388

Access Code: 793 734 477

All members of the public may view the meeting on Channel 15 and by streaming hosted on the City's website at [www.morgantownwv.gov](http://www.morgantownwv.gov). If you do not wish to speak at the meeting, please view it by these methods to conserve capacity on the videoconference.

Any person wishing to speak at the meeting may sign up by completing the form available at: <http://morgantownwv.gov/FormCenter/Public-Comment-Sign-Up-Sheet-14/Public-Comment-Form-Morgantown-Planning--99>. Another option to speak during a public comment portion is by providing their name, phone number they will use to participate, and the specific Case Number and/or General Public Comments listed on the Planning Commission's agenda on which they would like to speak by texting or calling 304-906-7843. You may sign up to speak at any time until the meeting begins. Additionally, the public may submit written comments for the public hearing portions of the meeting by sending an email to the Development Services Department at [bmcdonald@morgantownwv.gov](mailto:bmcdonald@morgantownwv.gov). In the email, please use the subject line "Public Comment PC 10/08/2020" and indicate in the body of the email the specific Case Number you wish to address and if you would like your comment to be read aloud during the public hearing portion for that case.

## AGENDA

- I. **CALL TO ORDER AND ROLL CALL**
- II. **GENERAL PUBLIC COMMENTS** – concerning matters not on the agenda

**III. MATTERS OF BUSINESS**

- A. Approval of the September 10, 2020 minutes.

**IV. UNFINISHED BUSINESS:**

- A. **MNS20-09 / Watson / 558 Burroughs Street:** Request by Douglas Bell on behalf of Scott and Jami Watson for minor subdivision approval of property located at 558 Burroughs Street. Seventh Ward Tax District, Tax Map 55, Parcel 64; R-1, Single-Family Residential District.

**V. NEW BUSINESS:**

**Development Services**

John Whitmore, AICP  
Interim Director

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



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**A. RZ20-04 / Conlon / 424 Evans Street:** Request by Kevin Conlon for a Zoning Map Amendment to reclassify property addressed as 424 Evans Street from OI, Office and Institutional District to R-3, Multi-Family Residential District. Tax District 12, Tax Map 14, Parcel 12, OI, Office and Institutional District.

**B. TX20-04 / Bucklew / Permitted Land Uses:** Request by Robert Bucklew for Zoning Text Amendments to Articles 1329.02, 1331.05.01, and 1331.06(13), allowing "Video Gaming / Lottery Establishment" uses in the B-2, Service Business District.

**VI. OTHER BUSINESS**

**A. Committee Reports**

- Traffic Commission
- Other Committees

**B. Staff Comments**

**VI. FOR THE GOOD OF THE COMMISSION**

**VII. ADJOURNMENT**

*If you need an accommodation, please contact 304-284-7431 or TDD 304-284-7512*

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# MORGANTOWN PLANNING COMMISSION

## MINUTES

6:30 p.m.

September 10, 2020

By Electronic Means

**COMMISSIONERS PRESENT:** Peter DeMasters, William Blosser, AJ Hammond, Carol Pyles, Tim Stranko, William Blosser, Bill Petros, Ronald Dulaney

**COMMISSIONERS ABSENT:** Sam Loretta and Michael Shuman.

**STAFF PRESENT:** John Whitmore, AICP

I. **CALL TO ORDER/ROLL CALL:** DeMasters called the meeting to order at 6:30 p.m. DeMasters and dispensed with the reading of the pre-meeting announcement.

II. **MATTERS OF BUSINESS:**

A. Approval of the August 13, 2020 meeting minutes. Petros abstained. Pyles moved to approve as presented; seconded by Hammond. The motion carried unanimously.

III. **UNFINISHED BUSINESS:** None.

IV. **NEW BUSINESS:**

A. **MNS20-08 / Wang / 558 Aspen Street:** Request by Xiaoqiang Wang and Lan Hu for minor subdivision approval of property located at 558 Aspen Street and 1360 Eastern Avenue. Seventh Ward Tax District, Tax Map 54, Parcels 23 and 23.1; R-1, Single-Family Residential District.

Whitmore presented the Staff Report and represented the applicant. Demasters noted that there was no one present for the public hearing and closed the hearing. Whitmore provided the staff report

Demasters asked for a motion to approve. Motion by Stranko to approve following staff recommendation, seconded by Blosser. Passed unanimously.

B. **MNS20-09 / Watson / 558 Burroughs Street:** Request by Douglas Bell on behalf of Scott and Jami Watson for minor subdivision approval of property located at 558 Burroughs Street. Seventh Ward Tax District, Tax Map 55, Parcel 64; R-1, Single-Family Residential District.

Whitmore presented the Staff Report and noted the applicant and agent are present.

Doug Bell, land surveyor and agent to the Watsons. Bell noted there is a shortage of road frontage and request variance to allow the new lot to keep conformance with the existing structure.

Demasters asked if there were questions. Stranko asked for a justification for departure from the code standards to be placed in the record. He further asked why the variance would be justified.

Bell and Watson responded that in comparing other properties that there is less than a one percent difference, approximately 14 inches of compliance. The location of the lot makes it a nice lot for a home without crowding. Petros questioned the existing house having enough setback for compliance. Bell answered in the affirmative. Whitmore confirmed that the Douglas Street side of the parcel is 138.68 linear feet, the addition of the 14 inches would make it able to be subdivided without a variance. Stranko confirmed with Whitmore that the parcels in the proposed subdivision would make the lot area standard and that frontage along Douglas is the only problem.

Being that there were no other questions from the board, and no members of the audience in favor or against, Demasters asked for staff recommendation.

Whitmore provided the following justification considerations when considering granting the requested subdivision variance or modification, but did not provide a recommendation:

- Approximately 84% of R-1 zoned parcels in the vicinity of the location meets or exceeds the R-1, District minimum lot frontage and area standards.
- Only one (1) parcel in this block does not meet the R-1 District minimum lot frontage and area standards.
- Staff is unaware of, nor has the petitioner provided substantiated topographic or other conditions peculiar to the site necessitating a variance from R-1 District minimum lot frontage and area standards.
- The parcel's geometry does not lend itself for a subdivision layout the meets the R-1 District minimum parcel standards as provided in Section 1333.03 of the Planning and Zoning Code.

Demasters asked for discussion. Stranko suggested to possibly table this until next month to allow the petitioner to consider other options. Petros asked if there was an error in the measurements, Bell stated that they are accurate.

Dulaney commented regarding where to draw the line when making exceptions, but also stated that he would be inclined to support based on the small numbers.

Demasters mentioned that as commissioners there is a need to be fair and across the board. Demasters asked Mr. Bell and Mr. and Mrs. Watson for comments. Mr. Watson suggested coming back next month may be the best option.

Stranko moved to table the application and place on next month's agenda. Petros seconded. Motion unanimous. Whitmore explained the process to the applicant.

- C. MNS20-10 / Scott Properties, LLC / 1244-1246 Eastern Avenue:** Request by Gregg Methany on behalf of Scott Properties, LLC for minor subdivision approval of property

located at 1244-1246 Eastern Avenue. Seventh Ward Tax District, Tax Map 55, Parcel 72; R-1, Single-Family Residential District.

Whitmore presented the Staff Report and represented the petitioner. Demasters opened the public hearing and there being no members of the audience spoke in favor or opposition, closed the public hearing..

There was discussion about the area being in a flood plain. Whitmore indicated that the Morgantown Review Board reviews stormwater runoff during the building permit approval process.

Being no other discussion, Demasters asked for a motion. Stranko moved for approval with staff conditions, seconded by Dulaney. The motion passed 8-1, with Blosser in the negative.

**VI. OTHER BUSINESS**

**A. Committee Reports**

- Traffic Commission Report: None.
- Other Committees: None.

**B. Staff Comments:** Whitmore announced that he has taken on the role of Interim Development Services Director and asked for feedback or any issues to please let him know.

**V. FOR THE GOOD OF THE COMMISSION**

Stranko mentioned recognizing Mr. Fletcher's service in some way. Demasters suggested that maybe inviting him to the next meeting and recognizing him in some way.

**VI. ADJOURNMENT:** 7:25 p.m.

**VII. MINUTES APPROVED:**

COMMISSION SECRETARY:

\_\_\_\_\_  
John Whitmore, AICP

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Michael Shuman, 5<sup>th</sup> Ward

Ronald Dulaney, City Council

AJ Hammond, City Admin.

## REVISED STAFF REPORT

**CASE NO:** MNS20-09 / Watson / 558 Burroughs Street

**REQUEST and LOCATION:**

Request by Douglas Bell on behalf of Scott and Jami Watson for minor subdivision approval of property located at 558 Burroughs Street and 1209 Douglas Avenue.

**TAX MAP NUMBER (s) and ZONING DESCRIPTION:**

Tax District 15, Tax Map 55, Parcels 64 and 64.1; R-1, Single-Family Residential District.

**SURROUNDING ZONING:**

R-1, Single-Family Residential District.

**BACKGROUND**

The petitioner seeks to subdivide Parcel 64 into two (2) parcels. Addendum A of this report illustrates the location of the subject site. This case was tabled at the September 10, 2020 Planning Commission meeting to allow for the petitioner to provide additional materials. The petitioner has revised the subdivision with additional neighbors to the south. A preliminary subdivision plat is included on Page 2 of this report.

**ANALYSIS:**

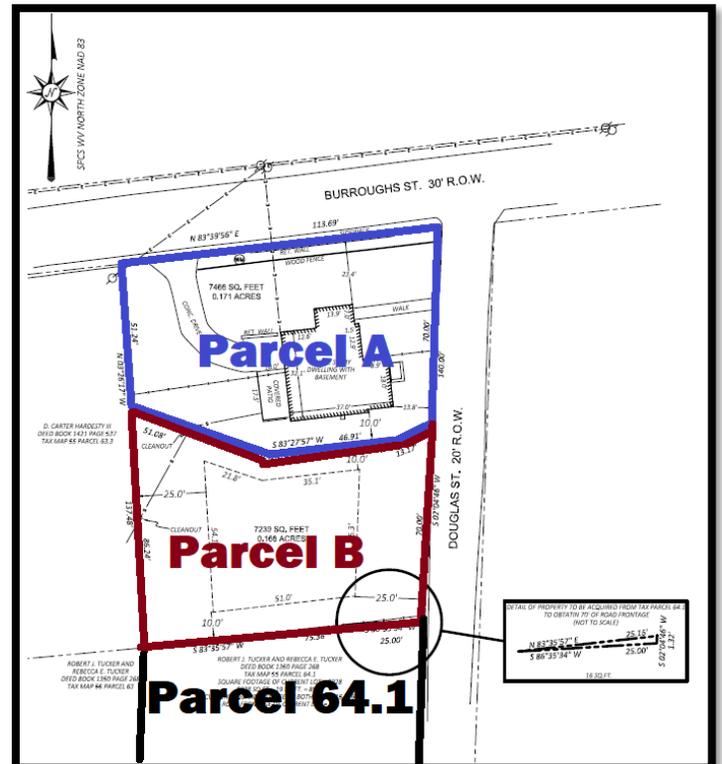
Tax District 15; Tax Map 55; Parcel 64, commonly known as 558 Burroughs Street is a 14,679.72 square foot corner-lot parcel with a 113.69-foot +/- frontage along Burroughs Street. The petitioner seeks to subdivide the parcel into two parcels, with one parcel containing the existing single-family dwelling becoming a corner lot and portions of the existing rear/side yard becoming a separate parcel. A neighboring parcel located directly south, Parcel 64.1 commonly known as 1208 Douglas Avenue will provide 16.5 square feet of area to the newly proposed parcel. A staff enhanced image to the right shows parcels involved in the subdivision.

**Development Services**

John Whitmore, AICP  
Interim Director

**Planning Division**

389 Spruce Street  
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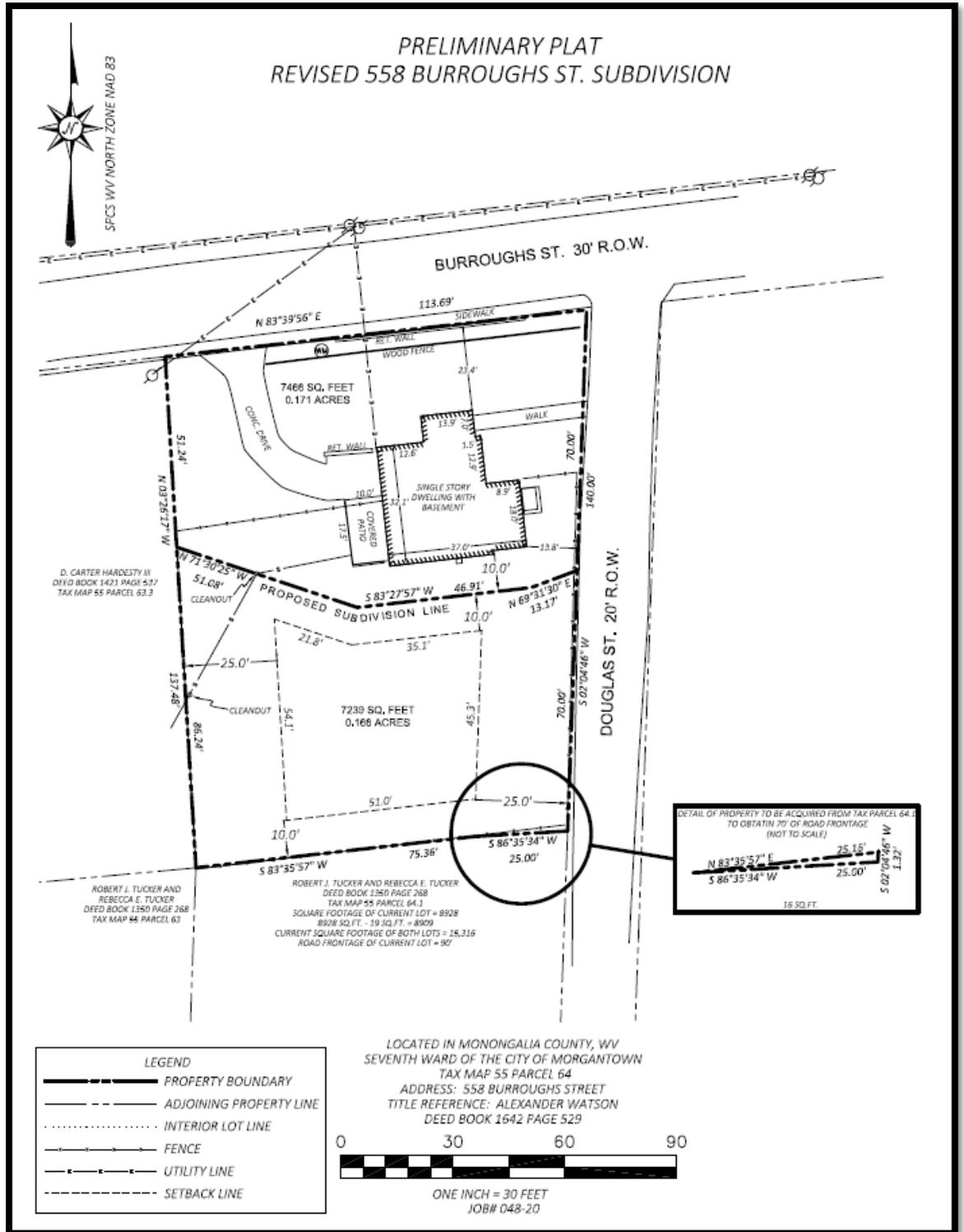
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Parcel A will have an approximate area of 7,466 square feet, Parcel B will have an approximate area of 7,239 square feet and Parcel 64.1 have an approximate area of 8,911 square feet. All three (3) parcels will exceed the R-1, Single-Family Residential District minimum lot area standard of 7,200 square feet. Parcels A and B will have a frontage along Douglas Street of seventy (70) feet and Parcel 64.1 will have a frontage along Douglas Street of 88.68-feet +/- . All three (3) parcels will exceed the R-1, District minimum frontage standard.

**STAFF RECOMMENDATION:**

Staff recommends approval of the minor subdivision as requested with the following conditions:

1. That the petitioner submits at least three (3) original final plat documents, including all access/utility easements, signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature.
2. That the final plat is recorded at the Monongalia County Courthouse within thirty (30) days of receiving the executed plat.

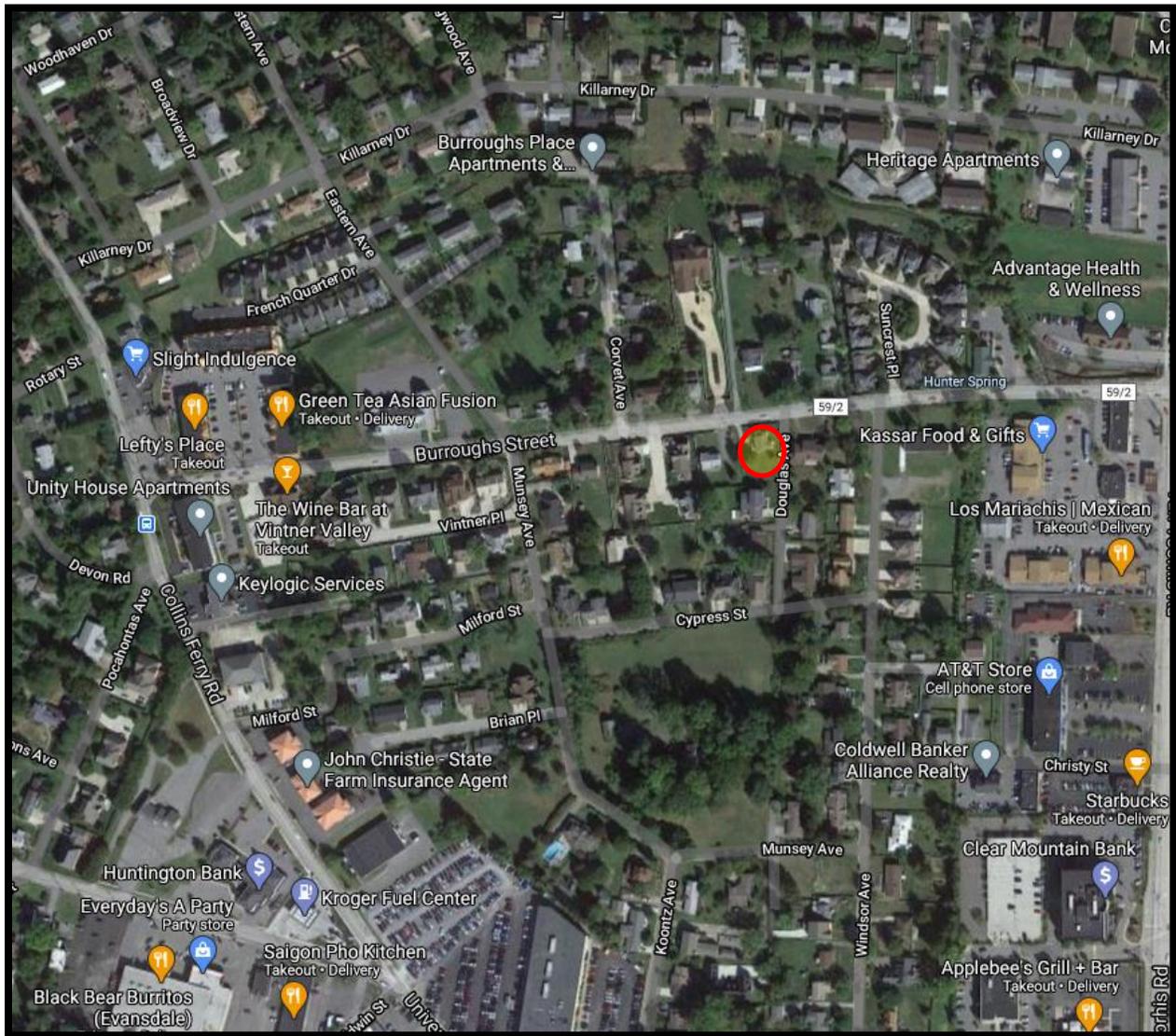
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**STAFF REPORT ADDENDUM A**  
**MNS20-09 / Watson / 558 Burroughs Street**







## APPLICATION FOR MINOR SUBDIVISION

A Minor Subdivision of property includes the creation of up to four (4) parcels or the consolidation of existing parcels via survey plat or approved deeded covenants, but does not involve the extension of off-site facilities (streets, etc.) or the dedication of a portion of the site for public use.

(PLEASE TYPE OR PRINT IN BLACK INK)

FEE: \$75.00 [Z-MNS]

I. APPLICANT			
Name:	Scott Watson & Jami Watson		Phone: (304)599-4453
Mailing Address:	299 Richland Avenue		Mobile: (304)376-6080
	Street	Morgantown WV 26505	Email: sjw829@comcast.net
	City	State Zip	
II. AGENT / CONTACT INFORMATION			
Name:	Douglas Bell		Phone: (304)698-5557
Mailing Address:	785 Amherst Road		Mobile:
	Street	Morgantown WV 26505	Email: dbell@bls-pllc.com
	City	State Zip	
Mailings –	Send all correspondence to (check one): <input type="checkbox"/> Applicant OR <input checked="" type="checkbox"/> Agent/Contact		
III. PROPERTY			
Owner:	Alexander Watson/Applicants are in process of		Phone:
Mailing Address:	purchasing the property.		Mobile:
	Street		Email:
	City	State Zip	
IV. SITE			
Street Address (if assigned):	588 Burroughs Street	Tax Map No(s):	55
Zoning:	R1	Parcel No(s):	64
Subdivision Description, including areas (sq. ft.) of proposed parcel(s):	Proposed subdivision of one parcel containing approximately 7,202 square feet from the southern portion of Tax Parcel 64.		
Are there any Variances from the Subdivision Regulations anticipated:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, to what extent is a variance necessary?	Frontage along Douglas Street for the new parcel will be approximately 65.5 feet, R1 specifies a minimum of 70 feet.		

\$75.00  
 Z-MNS  
 2021-00007363  
 Kim Nigro  
 8/24/2020 12:06:12 PM  
 Minor Subdivision Application  
 For Deposit  
 City of Morgantown



## APPLICATION FOR MINOR SUBDIVISION

### V. PLAT

Preliminary Plat submission – A Minor Subdivision Application must also include one (1) preliminary plat illustrating:

- (a) Existing and proposed property boundaries, property boundary dimensions, and square footage.
- (b) A letter of service availability and approval from the Morgantown Utility Board.

Final Plat submission – Upon approval by the Planning Commission, three (3) sealed Final Plat surveys must be submitted to the Planning Office and meet the following standards:

- (a) Drawn to a scale of one inch (1") equals fifty feet (50') or larger;
- (b) Date of preparation, north arrow, and scale;
- (c) Legal description;
- (d) Applicant/owner name and address;
- (e) Existing zoning;
- (f) Legend;
- (g) Vicinity map;
- (h) Existing and proposed utility lines and easements;
- (i) Certification by a registered land surveyor, licensed in the State of West Virginia, that the dimension and bearings are accurately delineated with a seal and signature;
- (j) Location, shape, exterior dimensions of each existing building on the site(s);
- (k) Location and dimensions of paved surfaces including sidewalks and curb cuts, and of all abutting streets;
- (l) Location of springs, streams, other water bodies, and areas subject to flooding;
- (m) Floodplain designation making reference to pertinent FEMA Firm Community Panel Number;
- (n) Approval signature block allowing space for President of Morgantown Planning Commission;
- (o) Other items as deemed necessary by Planner Director or City Engineer.

**Please note that all approved minor subdivision plats must be filed with the Monongalia County Tax Office within thirty (30) days of approval. Plats not filed within thirty (30) days will be considered invalid by the City of Morgantown and will require a new application.**

### VIII. ATTEST

I hereby certify that I have read and examined this document and know the same to be true and correct. All provisions of laws and ordinance governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other federal, state, or local law regulating construction or the performance of construction.

Douglas Bell



08/23/2020

Type/Print Name of Applicant/Agent

Signature of Applicant/Agent

Date



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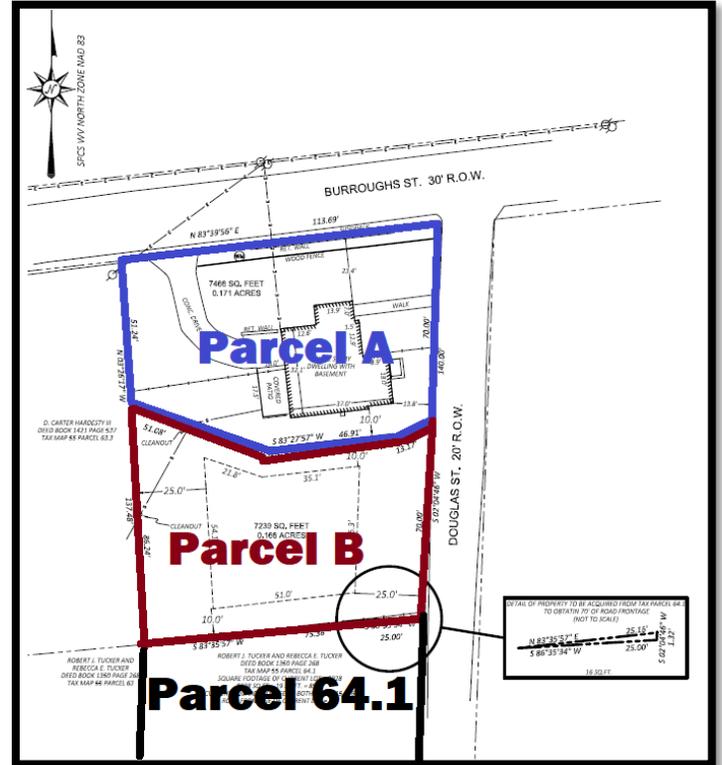
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AJ Hammond, City Admin.

**ANALYSIS:**

Tax District 15; Tax Map 55; Parcel 64, commonly known as 558 Burroughs Street is a 14,679.72 square foot corner-lot parcel with a 113.69-foot +/- frontage along Burroughs Street. The petitioner seeks to subdivide the parcel into two parcels, with one parcel containing the existing single-family dwelling becoming a corner lot and portions of the existing rear/side yard becoming a separate parcel. A neighboring parcel located directly south; Parcel 64.1 commonly known as 1208 Douglas Avenue will provide 16.5 square feet of area to the newly proposed parcel. A staff enhanced image to the right shows parcels involved in the subdivision.



**Development Services**

John Whitmore, AICP  
Interim Director

**Planning Division**

389 Spruce Street  
Morgantown, WV 26505  
304.284.7431



# MORGANTOWN PLANNING COMMISSION

October 8, 2020  
 6:30 p.m.  
 By Electronic Means

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Carol Pyles, 7<sup>th</sup> Ward

**Planning Commissioners:**

Sam Loretta, 1<sup>st</sup> Ward

Tim Stranko, 2<sup>nd</sup> Ward

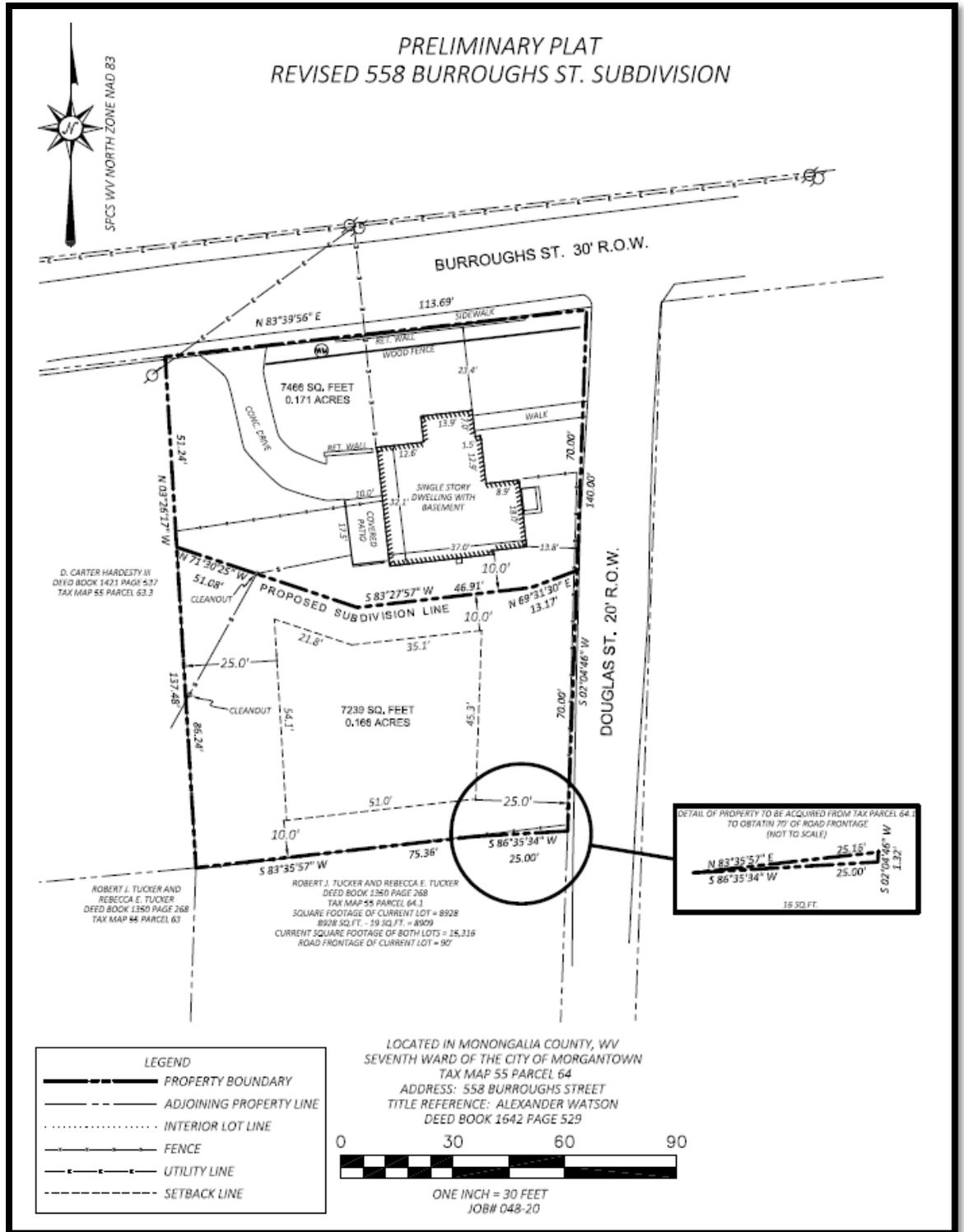
William Blosser, 3<sup>rd</sup> Ward

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Parcel A will have an approximate area of 7,466 square feet, Parcel B will have an approximate area of 7,239 square feet and Parcel 64.1 have an approximate area of 8,911 square feet. All three (3) parcels will exceed the R-1, Single-Family Residential District minimum lot area standard of 7,200 square feet. Parcels A and B will have a frontage along Douglas Street of seventy (70) feet and Parcel 64.1 will have a frontage along Douglas Street of 88.68-feet +/- . All three (3) parcels will exceed the R-1, District minimum frontage standard.

**STAFF RECOMMENDATION:**

Staff recommends approval of the minor subdivision as requested with the following conditions:

1. That the petitioner submits at least three (3) original final plat documents, including all access/utility easements, signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature.
2. That the final plat is recorded at the Monongalia County Courthouse within thirty (30) days of receiving the executed plat.

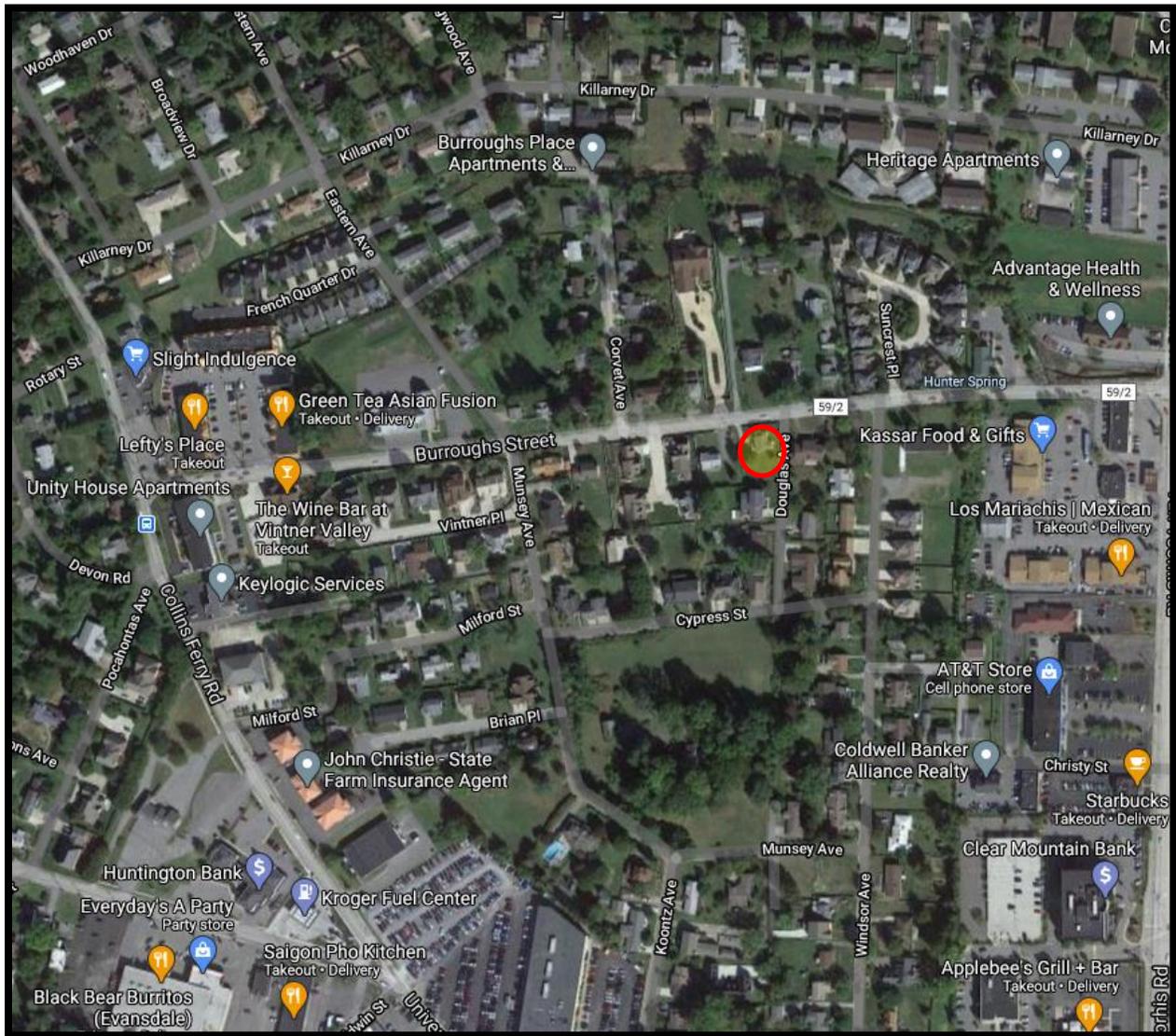
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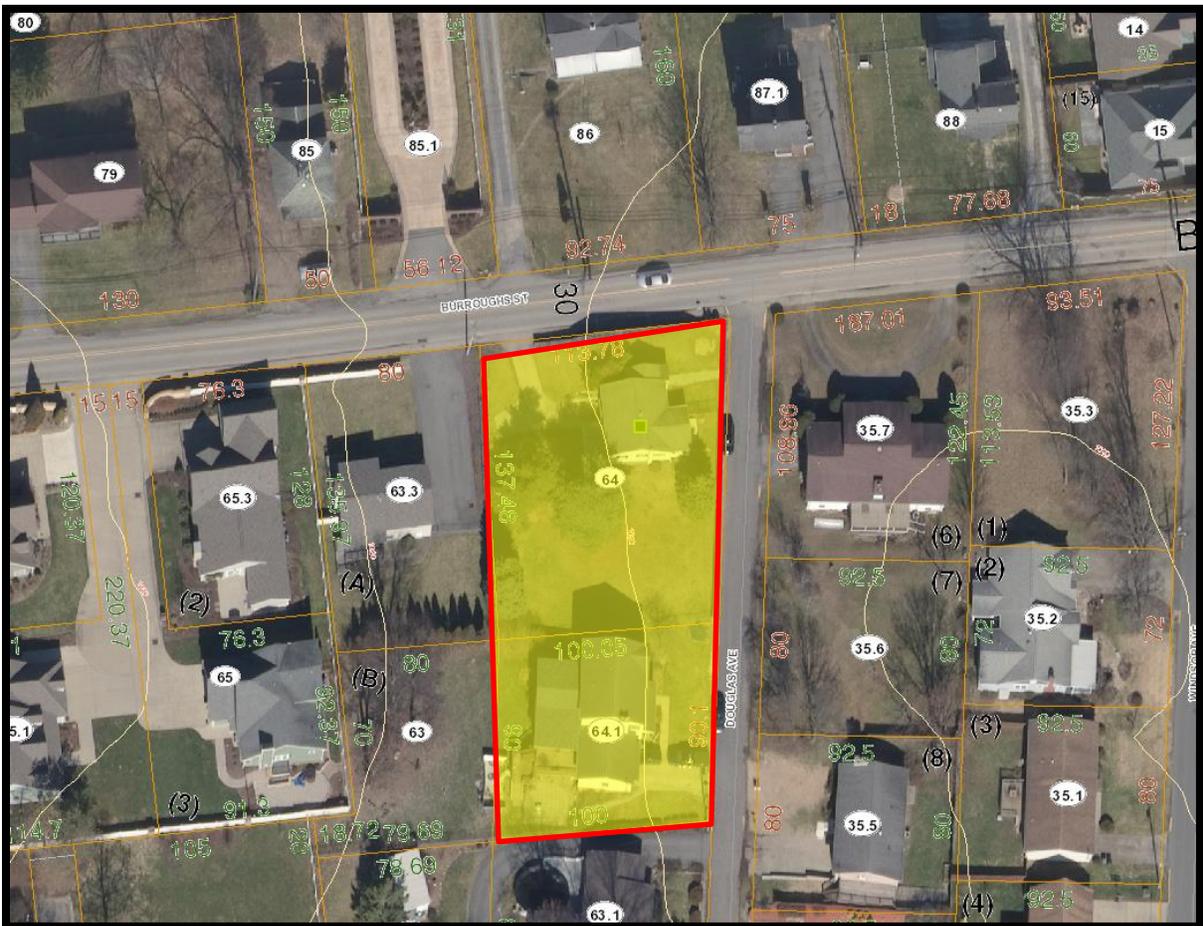
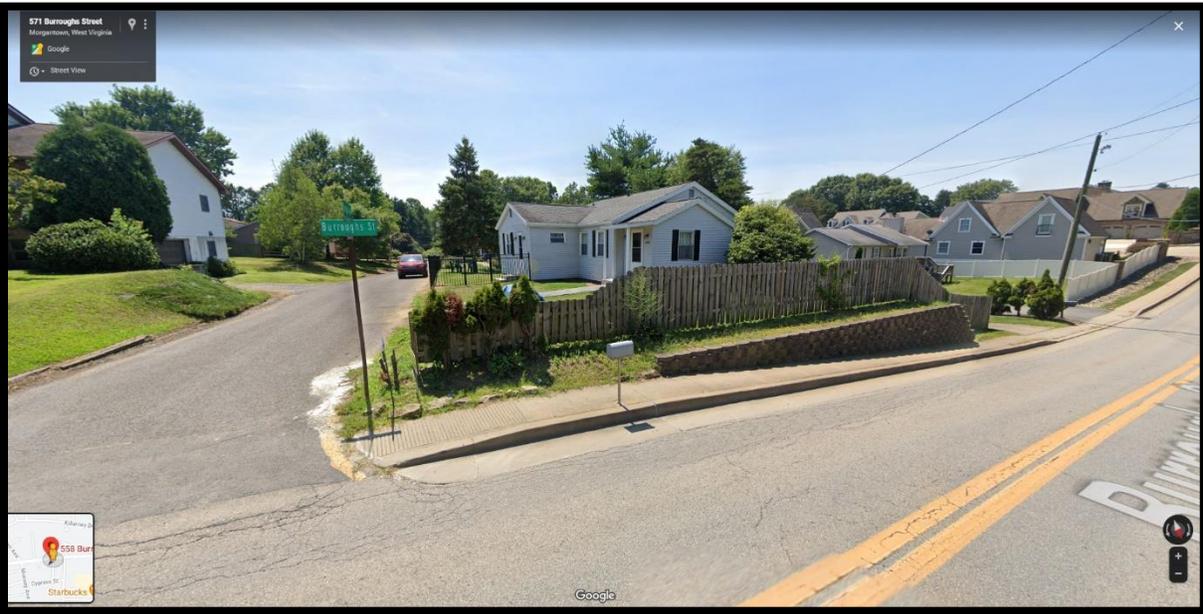
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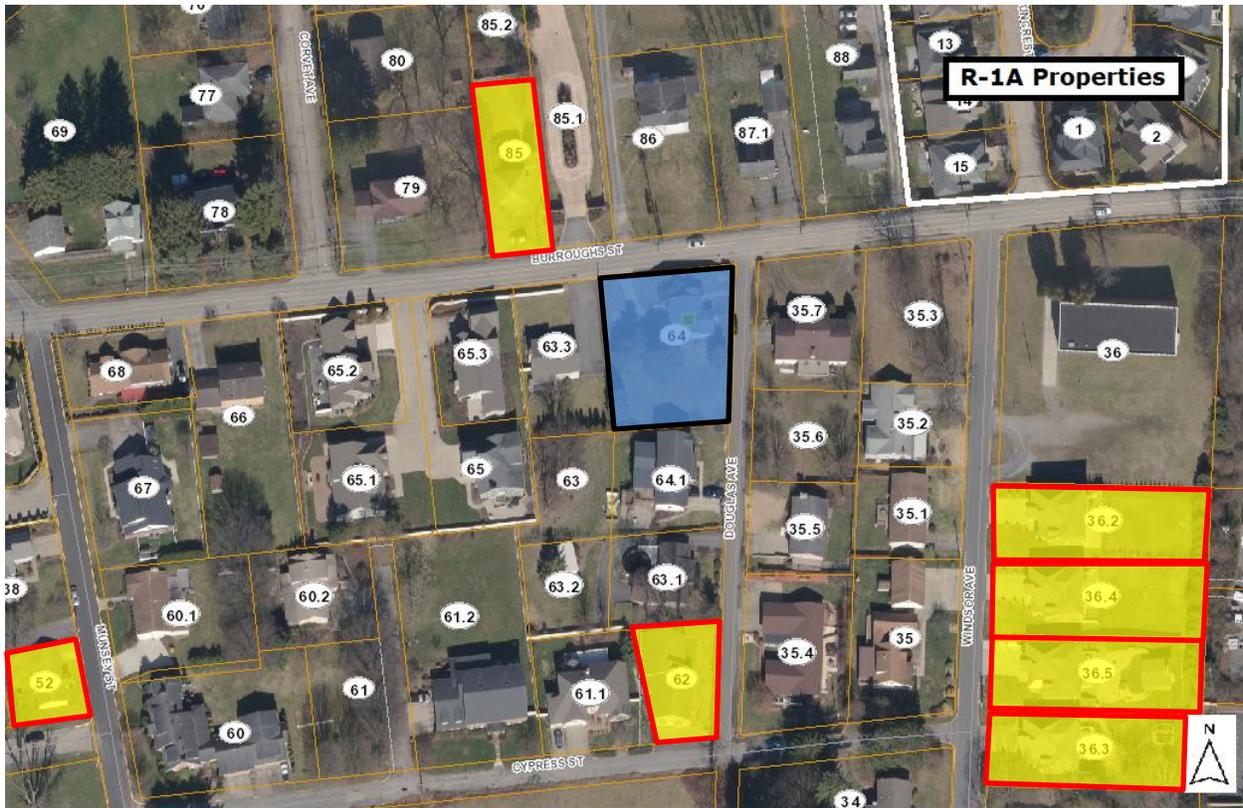
**STAFF REPORT ADDENDUM A**  
**MNS20-09 / Watson / 558 Burroughs Street**



**STAFF REPORT ADDENDUM A**  
**MNS20-09 / Watson / 558 Burroughs Street**



**STAFF REPORT ADDENDUM B**  
**MNS20-09 / Watson / 558 Burroughs Street**



**R-1 Zoned Properties with Nonconforming Frontages**

**Non Conforming**

**558 Burroughs Street**

Not to scale

Notes:

1. Parcels 85.1 and 85.2 are right-of-way for a single dwelling not shown on this map. Parcels 85.1 and 85.2 were not included in this analysis.
2. Parcels outlined in white at the top right-hand corner of the map are zoned R-1A and were not included in this analysis.
3. Parcels 60, 65, and 65.1 are conforming with Section 1333.03(B) provisions allowing a minimum frontage waiver for parcels not fronting an existing road and that are served by a proper right-of-way. Parcels 60, 65, and 65.1 were included in the analysis.

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Michael Shuman, 5<sup>th</sup> Ward

Ronald Dulaney, City Council

AJ Hammond, City Admin.

## STAFF REPORT

**CASE NO:** RZ20-04 / Conlon / 424 Evans Street

**REQUEST and LOCATION:**

Request by Kevin Conlon for a Zoning Map Amendment to reclassify property addressed as 424 Evans Street from OI, Office and Institutional District to R-3, Multi-Family Residential District.

**TAX MAP NUMBER(s) and ZONING DESCRIPTION:**

Tax District 12, Tax Map 14, Parcel 12; OI, Office and Institutional District.

**SURROUNDING ZONING:**

North, South and West: OI, Office and Institutional District

East: R-3, Multi-Family Residential District

**BACKGROUND:**

The petitioner seeks to amend the zoning map by changing the zoning classification for the subject premises from OI to R-3. This zoning map amendment would permit the petitioner to pursue a "Dwelling, Two-Family Residential" use on-site. Addendum A of this report identifies the location of the subject site and illustrates the existing and proposed zoning and property ownership for the subject premises and immediate area.

The land use classification for this location is "Dwelling, Single-Family," which is not permitted in OI zoning district (see image below). Accordingly, this "Dwelling, Single-Family" use is considered nonconforming and may continue until abandoned.

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Dwelling, Single family	P	P	P	P	P							16

Staff believes the proposed zoning map amendment would be considered a permitted map amendment and not "spot zoning" because the subject area adjoins the R-3 zoning district. Accordingly, the proposed zoning map amendment would be a boundary adjustment of the R-3 zoning district.

**ANALYSIS:**

The subject premises are situated at the intersection of Evans Street and unnamed alley. The property is located in a residential neighborhood that is primarily accessed from University Avenue by Evans and Dille Street and the unnamed alley. This location includes rental housing ranging from a few converted single-family homes and garden apartments to the abutting Metro Towers multi-family residential property.

**Development Services Department**

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Interim Director

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As Addendum A illustrates, the petitioner’s proposed zoning map amendment would expand the R-3, Multi-Family Residential zoning district into this residential area. The Evans Street block development is sparse with steep slopes limiting development on the southern side of the street.

Addendum B of this report provides Article 1339 “R-3, Multi-Family Residential District” and Table 1331.05.01 “Permitted Land Uses” of the Planning and Zoning Code. It is included as a resource to understand the density, intensity, and land uses permitted in the R-3, District.

*Comprehensive Plan Concurrence*

As recommended in Chapter 9 “Implementation” of the 2013 Comprehensive Plan Update, Addendum C of this report identifies how the proposed zoning map amendment relates to the Comp Plan’s land management intent, location, and pattern and character principles.

It should be noted that “shall” statements within the Comp Plan must be understood as desired objectives and strategies that do not have the force or effect of law unless incorporated into the City’s Planning and Zoning Code.

The site is located within the “Neighborhood Revitalization” and “Corridor Enhancement” growth frameworks and land management concept areas. The following image provides the description of these land management concept area.

**Corridor Enhancement\*\*:** Improving development along corridors with a mix of uses, increased intensity at major nodes or intersections and roadway improvements to improve traffic flow, pedestrian and biking experience.

**Neighborhood Revitalization:** Stabilization and reinvestment in existing neighborhoods that includes improvements to public and private buildings and infrastructure, and support for infill development, adaptive reuse and redevelopment that offers a mix of residential types and supporting uses.

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This property and the surrounding non-conforming residential uses are identified as an Area for Study in the 2013 Comprehensive Plan Update. 424 Evans Street is located in Area No. 7. This study area encompasses all of the OI, Office and Institutional zoned properties in this location. The 2013 Comprehensive Plan Update found that the OI, District does not reflect the existing uses or development pattern and is limiting this area’s future development potential. A Small Area Plan for Area No. 7 is to consider the following:

- Zoning Reclassifications that allow for higher residential density patterns;
- Provide incentives to assemble and consolidate realty;



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- Discourage continued added density of converted single-family dwellings;
- Establish appropriate design standards;
- Improve Infrastructure supporting higher densities including sidewalks, pedestrian crossings, streetscape enhancements, public open spaces, and increased supply of on-site parking; and
- Potential expansion of the Sunnyside overlay Districts.

It appears the requested zoning classification change for 424 Evans Street from OI to R-3 is in concurrence with the Comp Plan’s principals for infill and redevelopment land management objectives and furthers the following plan implementation strategies:

- LM 2.1 ..... Identify and prioritize sites for infill and redevelopment.
- LM 4.3 ..... Revise zoning regulations to permit mixed-use development at appropriate scales in various zoning districts.
- LM 5.2 ..... Permit higher density development in areas that are well-supported by existing or planned transportation infrastructure or transit services.
- NH 1.2 ..... Pursue zoning map amendments where appropriate to address potential zoning conflicts in residential areas both to preserve existing residential areas where appropriate or promote infill and redevelopment.

Staff encourages the Planning Commission to review the Comp Plan for guidance as Addendum C is not intended to represent a complete comparative assessment.

Public comment received by September 30, 2020 is included in the meeting packet

**STAFF RECOMMENDATION:**

Zoning map amendment requests should be evaluated on their land-use merits alone. The petitioners’ development intentions are extraneous, and the Commission should consider the request on its merits as a land use decision.

In conducting such an analysis, the Commission should determine if the R-3, Multi-Family Residential District is the appropriate zoning classification for the petitioner’s development premises, weighing all possible future development and land use scenarios as permitted by the Planning and Zoning Code; particularly, Article 1339 “R-3, Multi-Family Residential District” and Table 1331.05.01 “Permitted Land Uses.”

It is the opinion of the Development Services Department that the petitioner’s request to reclassify the property to R-3, Multi-Family Residential District is supported by the intent, location, pattern and character goals and land management objectives set forth in the 2013 Comprehensive Plan Update. However, the location is identified for further study as part of Area 7. In 2019, the Planning Commission had a similar rezoning application, where the property was located in a future study area and sought higher density Residential development opportunities with the R-3, Multi-Family Residential District.

In Case RZ19-01 / Scott Properties, LLC / Jones Avenue, the Development Services Department recommended approval of a map amendment for property located in the Area

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5 Future Study Area. During the public hearing and Planning Commission discussion, Development Services staff was charged with initiating the Small Area Study for Area 5 to allowing for adequate community input. The petitioner for RZ19-01 withdrew the application and the Small Area Study for Area 5 was commenced. This planning effort took approximately one-year to complete and resulted in the Future Study Area No. 5 Small Area Plan Recommendations Report and the current WHOD, Wiles Hill Overlay District.

Staff maintains that the Planning Commission should provide City Council with a positive recommendation for this specific petition but would understandably be receptive to commission guidance to initiate the Area No. 7 study in-lieu or in combination of a formal recommendation.

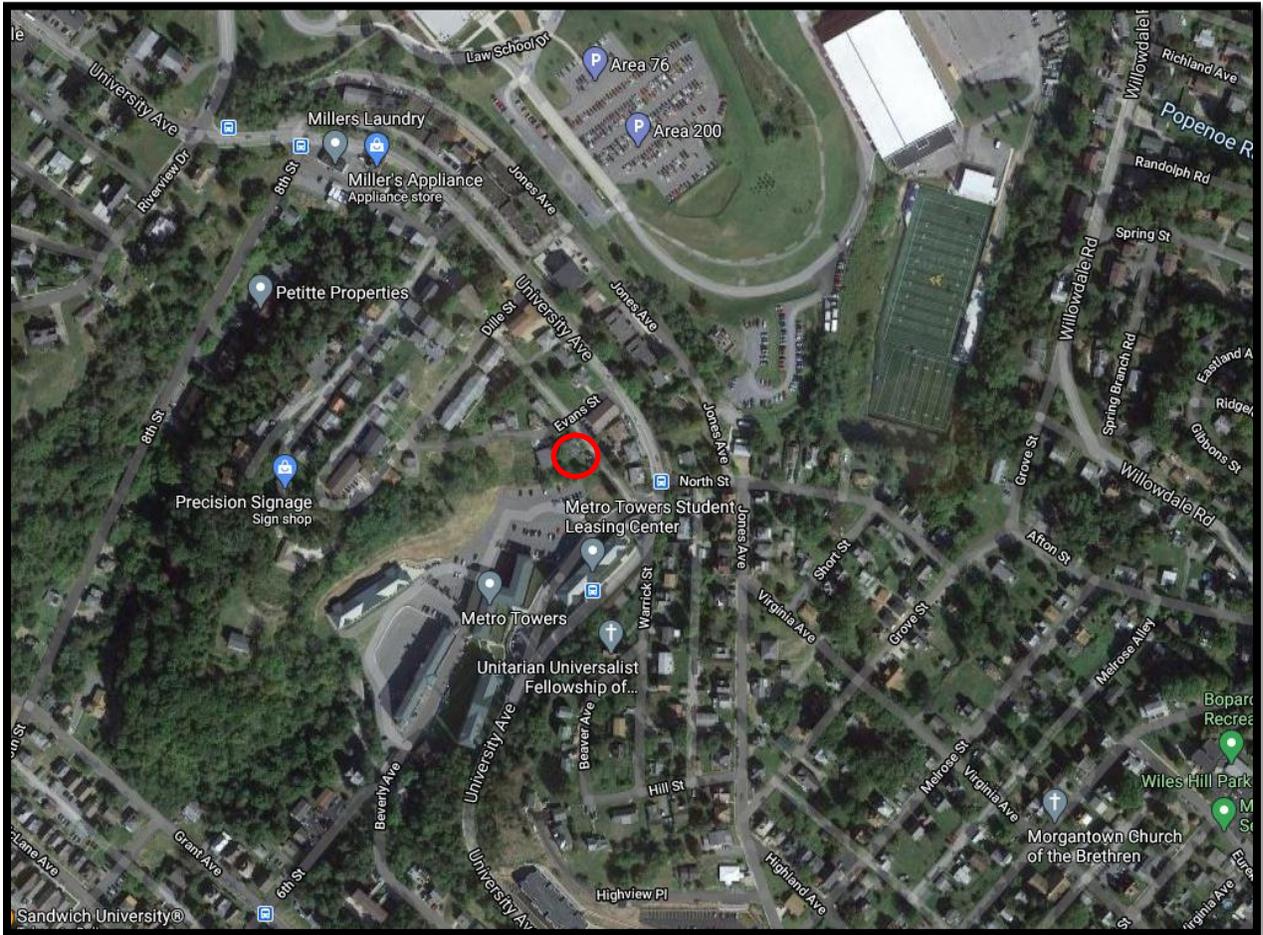
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# STAFF REPORT ADDENDUM A

## RZ20-04 / Conlon / 424 Evans Street



**STAFF REPORT ADDENDUM A**  
**RZ20-04 / Conlon / 424 Evans Street**



# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

143

### ARTICLE 1339 R-3, Multi-Family Residential District

1339.01	Purpose.	1339.05	Encroachments into setbacks.
1339.02	Permitted principal and conditional uses.	1339.06	Building height.
1339.03	Lot provisions.	1339.07	Performance standards.
1339.04	Setbacks.		

#### CROSS REFERENCES

Design standards - see P. & Z. 1331.06(16)  
Non-residential uses - see P. & Z. 1331.06(29)  
Accessory uses - see P. & Z. 1331.08  
Permitted signs - see P. & Z. 1369.06

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#### 1339.01 PURPOSE.

The purpose of the Multi-Family Residential (R-3) District is to:

- (A) Provide for a variety of housing density and types, and customary accessory uses at a density higher than in other city neighborhoods, and
- (B) Preserve the desirable character of existing high density residential neighborhoods, and
- (C) Provide for adequate light, ventilation, quiet, and privacy for neighborhood residents.

#### 1339.02 PERMITTED PRINCIPAL AND CONDITIONAL USES.

See the Permitted Land Use Table 1331.05.01.

#### 1339.03 LOT PROVISIONS.

- (A) The minimum lot size shall be 4,000 square feet.
- (B) The minimum lot frontage shall be forty (40) feet. The frontage requirement may be waived for a parcel not fronting on an existing road if the parcel is served by a proper right-of-way.
- (C) Maximum lot coverage shall be sixty (60) percent.

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

1339.04

PLANNING AND ZONING CODE

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### 1339.04 SETBACKS.

(A) The following setbacks shall be required for all principal structures, except as otherwise provided in Section 1363.02(B) Yard, Building Setbacks and Open Space Exceptions:

- (1) Minimum Front setback:.....10 feet
- (2) Maximum Front setback:.....20 feet
- (3) Minimum Side setback:.....5 feet
- (4) Minimum Rear setback: .....20 feet.

(B) On a corner lot, the front lot line shall be the lot line having the shortest dimension along the street right-of-way line. The required side yard setback on the side facing a street shall be one and one-half (1.5) times the normal side setback requirement. (Amended by Ord. 06-24, Passed 07-18-2006)

### 1339.05 ENCROACHMENTS INTO SETBACKS.

(A) Architectural features may project into a required setback as provided below:

- (1) Fire escapes, chimneys, cornices, awnings, canopies, eaves, sills, pilasters, lintels, gutters or other similar features may extend into a setback a distance not exceeding three (3) feet, except that such features shall not extend closer than three (3) feet from the property line.
- (2) Uncovered stairs, landings and porches shall not extend closer than three (3) feet from the property line. Such porches may not subsequently be enclosed unless the normal setback requirements for the district are met.
- (3) Open and covered, but un-enclosed front porches attached to single family or two-family dwellings may extend into the required front setback a distance equal to fifty (50) percent of the setback depth.

(B) No permitted encroachment noted above shall extend to within three (3) feet of an accessory structure.

(C) Fences, walls, terraces, steps or other similar features may encroach into a required setback, except as provided in Section 1363.03, Safety and Vision. Such appurtenances shall not be located within access, drainage, or utility easements. (Ord. 06-01. Passed 1-3-06.)

(D) HVAC mechanical units may be located no closer than two (2) feet to a side lot line and may not be placed in the front yard. (Ord. 18-24. Passed 7-10-18.)

### 1339.06 BUILDING HEIGHT.

(A) The permitted maximum height shall be four (4) stories or fifty-five (55) feet, whichever is less, except as provided in Section 1363.02(A), Height Exceptions. A conditional use permit shall be required for buildings in excess of fifty-five (55) feet but less than eighty (80) feet.

(B) The maximum height of an accessory structure shall not exceed eighteen (18) feet.

(C) Minimum building height for a two-family or multifamily dwelling should be two (2) stories. (Ord. 06-40. Passed 11-21-06.)

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

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R-3, Multi-Family Residential District

1339.07

### 1339.07 PERFORMANCE STANDARDS.

(A) All residential construction shall substantially conform in street orientation and massing to adjacent interior lot residential structures.

(B) Building Design Standards for Single- and Two-Family Dwelling new construction, additions, and redevelopment projects.

- (1) Buildings should be clad in one or a combination of wood siding, vinyl siding, fiber cement siding, unit masonry, or manufactured masonry.
- (2) Garden walls shall not be made from concrete masonry units (CMU) unless of the split face ornamental variety designed for use in landscaping projects.
- (3) Principal building roofs should have a pitch that substantially conforms to the roof pitches of adjacent single-family dwellings.
- (4) Two-family dwellings shall have substantial front porches oriented toward the primary street frontage. The total width of a front porch should not be less than fifty (50) percent of the width of the front façade. Covered, but unenclosed, front porches shall not count toward the permitted maximum lot coverage.
- (5) Garages, if attached to the dwelling, may not take up more than 65% of the width of the front façade nor extend closer to the front lot line than the primary building line of the front façade.

(C) Building Design Standards for Townhouse, Multi-Family, Mixed Use, and Nonresidential new construction, additions, and redevelopment projects.

- (1) Prohibited façade materials include vinyl siding; glare producing materials; unfinished wood; wood board sheathing products; ribbed, corrugated, galvanized, and alloy-coated metal panels; and, materials designed and intended for interior use.
- (2) Prohibited façade primary materials.
  - (a) For Townhouse and Multi-Family Dwellings, synthetic stucco systems or concrete masonry units (CMU).
  - (b) For Mixed Use and Nonresidential buildings, synthetic stucco systems, concrete masonry units (CMU), or fiber cement siding.
- (3) For new construction of Townhouse Dwellings, masonry shall be used as the primary material on 100% of the net façade areas of exposed basement exterior walls and should be used as the primary material on at least 50% of the net façade area of the ground floor level. Manufactured masonry must appear identical to traditional unit masonry construction.
- (4) For new construction of Multi-Family, Mixed Use, and Nonresidential buildings, masonry shall be used as the primary material on 100% of the net façade areas of exposed basement exterior walls and should be used as the primary material on at least 75% of the net façade area of the ground floor level and the first story above the ground floor level. Manufactured masonry must appear identical to traditional unit masonry construction.
- (5) Permitted façade accent materials include unit masonry, manufactured masonry, masonry detailed concrete, smooth metal panel systems, concrete, synthetic stucco systems, concrete masonry units (CMU), and fiber cement siding.

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

1339.07

PLANNING AND ZONING CODE

146

- (6) Synthetic stone may be used if it is detailed to have the appearance of authentic stone. At a building corner, the synthetic stone must wrap around the corner and, at a minimum, extend to a depth of traditional stone.
- (7) Building Articulation. New development shall incorporate articulation techniques that divide the overall building mass into modules in order to provide a sense of human scale and reinforce, where applicable, the traditionally-scaled building pattern within the surrounding built environment.
  - (a) The following design options may be used individually, or in combination, to meet the intent of desired building articulation. Other creative building articulation strategies may also be appropriate.
    - (i) Wall Offsets.
    - (ii) Wall Projections.
    - (iii) Step Backs
    - (iv) Variations in Material.
    - (v) Base, Middle, Cap Design
  - (b) Appropriate vertical articulation techniques include:
    - (i) Wall plane offsets such as notches or varied façade setbacks.
    - (ii) Wall projections such as columns, moldings, or pilasters.
    - (iii) Vertical variations in material.
  - (c) Appropriate horizontal articulation techniques include:
    - (i) Stepping back taller building elements.
    - (ii) Belt courses, expression lines, or other techniques that provide horizontal expression.
    - (iii) Awnings, canopies, or other features that help define the ground floor of a building.
    - (iv) Varied roof forms.
    - (v) Horizontal variations in material.
    - (vi) Horizontally dividing the façade into a distinct base, middle, and cap.
- (8) Roof Form. New development shall incorporate roof forms that convey compatible mass and scale, add visual interest, and are appropriate to a building's use.
  - (a) Roofing shall be consistent in material, style, pattern, and color throughout. Roofing may only be of earth toned or other muted colors. Glare producing materials and unpainted metal roofing is prohibited.
  - (b) Appropriate techniques to create a sense of visual interest along the street include:
    - (i) Using a combination of gable, hip, and flat roof forms to provide visual interest.
    - (ii) Varying the roof profile by stepping down some parts of the façade.
    - (iii) Defining a flat roof form with a distinct parapet or cornice line to help reinforce a vertical base, middle and cap building articulation, and contribute to a sense of iconic design.

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

146A

R-3, Multi-Family Residential District

1339.07

- (iv) Using an overhang on sloped roof forms.
  - (v) Other creative roof form strategies may also be appropriate including, but not limited to, entry features, tower elements, and rounded elements.
- (9) No security bars, screens or gates shall be permitted to be attached to the principal façade of a townhouse, multi-family, mixed use, or nonresidential building.
- (10) Transparency. The ground floor of the principal façade of mixed use and nonresidential buildings between three (3) feet and eight (8) feet in height shall have a minimum fenestration ratio of sixty percent (60%), comprised of clear windows that allow views of indoor nonresidential component space and/or product display areas.
- (11) Civic Buildings and Churches or Places of Worship should be built so that they terminate street vistas whenever possible, and should be of sufficient design to create visual anchors for the community.

(D) With the exception of single-family, two-family, and townhouse dwellings, surface parking areas shall be concealed along the street frontage by an architectural screen wall between three and one-half (3.5) and five (5) feet in height, and by dense landscaping along property lines not adjoining a public street. The material and finish of the architectural screen shall be consistent with the materials and finish of buildings with which it is associated or buildings in the immediate vicinity.

(E) Sidewalks shall be constructed along the frontage of a lot upon which a use is to be constructed. New sidewalks shall be at least six (6) feet wide, or the same width as an existing but incomplete sidewalk along the same side of the street.  
(Ord. 18-24. Passed 7-10-18.)

(F) All exterior lights shall be designed, located, installed and directed in such a manner as to prevent glare from encroaching onto adjoining properties or public rights-of-way.  
(Ord. 18-25. Passed 8-7-18.)

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

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Establishment of Zoning Districts and Zoning Map

1331.05

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Administrative Office				C	P	C	P	P	P	P	P	29
Agricultural Activity	P										P	
Airport											C	
Amphitheater							P	P				
Animal Grooming Service		C	C	C	C	P	P	P		P		28, 29
Animal Shelter							C			C	P	
Apparel Shop						P	P	P		P	P	28
Appliance Repair Establishment		C	C	C		P	P	P		P	P	4, 28, 29
Appliance Sales Establishment							P	P		P		
Art Gallery		C	C	C		P	P	P	P	P		28, 29
Artist Studio		C	C	C	P	P	C	P	P	C		28, 29
Assembly Hall						P	P	P		P		28
Assisted Living Facility				C		C	C					
Athletic Field	C	C	C	C		C	P	P		P		
Automotive Paint Shop							P				P	4, 9, 10
Automotive Rentals							C			C		
Automotive Sales							C			C		
Automotive Supply							C			P	P	
Automotive Tire Repair/Sales							P			P	P	4, 9, 10
Automotive/Boat Repair Shop							P				P	4, 9, 10
Automobile Repair Shop, Incidental							C	C		C	P	4, 9, 10
Bakery, Retail		C	C	C		P	P	P		P		28, 29
Bakery, Wholesale							P			P	P	
Barber Shop / Beauty Salon		C	C	C	P	P	P	P		P		28, 29
Bed and Breakfast Inn			C	C		P	P	P				5, 28
Brew Pub						C	P	P		P		18
Building Materials Supplier							P			P	P	9, 10
Car Wash/Detailing							P			P	P	
Caretaker's Residence	C	C	C	C			C		C	C	P	
Cemetery	P	P	P	P			P	P				
Charitable, Fraternal or Social Organization						P	P	P	P	P		28

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

1331.05

PLANNING AND ZONING CODE

108

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Churches, Places of Worship	C	C	C	C	C	C	P	P	C	P	C	12
Clinic, Medical				C		P	P	P	P	P	P	28, 29
Club or Lodge						P	P	P				28, 29
Coin-operated Cleaning/Laundry Service			A	C		P	P	P		P		28, 29
Communications Equipment Building	C	C	C	C		P	P	C	P	P	P	28
Community Center	C	C	P	P	P	P	P	P	C			28
Community Gardens	P	P	P	P		P						28
Composting Operation										P	P	3
Conference Center							P	P		P		
Consumer Fireworks Retail Sales							C			P	P	33
Consumer Fireworks Retail Sales Establishment							C			P	P	33
Consumer Fireworks Wholesale Establishment											P	34
Convenience Store, Neighborhood		C	C	C		P	P	P				28, 29
Dance or Social Club, Youth						C	P			P		
Day Care Facility, Class 1	P	P	P	P	P	P	P	P	P	P		
Day Care Facility, Class 2	C	C	C	P	P	P	P	P	P	P		19
Day Care Facility, Class 3				C	P	P	P	P	P	P		19
Department Store							P	P		P		
Distribution Center											P	
Dog Run							C			C	C	24
Dormitory				P			P	P				
Drive-in Theatre/Outdoor							P				P	
Drive-through Facility						A	A	A	A	A		25
Driving Range, Golf							C				C	
Drug Store		C	C	C		P	P	P		P		28
Dry Cleaning and Laundry Pick-up				P		P	P	P		P		28, 29
Dry Cleaning and Laundry Service						C	P	P		P		
Dwelling, Mixed Use			C	P		P	P	P	P	P		20, 26, 28
Dwelling, Multi-family			C	P			P	C	C			35
Dwelling, Single family	P	P	P	P	P							16

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

109

Establishment of Zoning Districts and Zoning Map

1331.05

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Dwelling, Townhouse			P	P	P		P	P				
Dwelling, Two-family			P	P	P			C				
Electrical Repair Shop						P	P	P		P		4, 28
Emergency Shelter				C		C	C	P				
Equipment or Furniture Rental Establishment							P	P		P	P	9, 10
Essential Services and Equipment	P	P	P	P	P	P	P	P	P	P	P	28
Extractive Industry											P	31
Fairgrounds											P	
Farmer's Market						C	C	P				
Financial Services Establishment					P	P	P	P	P	P		28
Florist Shop		C	C	C		P	P	P		P		28, 29
Fraternity or Sorority House			C	P			P	C				
Funeral Home				P		P	P	P				28
Furniture Sales Establishment (Antique, New or Used)							P	P		P		4
Garden Center							P			P		
Gas Station Mini-Mart							P	P		P	P	8
Gasoline Service Station							P	P		P	P	8
Golf Course	C	C	C	P		P	P	P		P	P	28
Government Facility	P	P	P	P		P	P	P	P	P	P	28
Greenhouse, Non-Commercial	A	A	A	A							P	
Greenhouse, Commercial							P				P	
Grocery Store							P	P		P	P	
Group Residential Facility	P	P	P	P		P	P	P				28
Group Residential Home	P	P	P	P		P	P	P				28
Guest House			C	C								
Half-way House			C	C		C	C					
Hardware Store						C	P	P		P	P	
Health/Sports Club			C	C		P	P	P	P	P	P	28, 29
Heavy Machinery Sales										P	P	4, 9, 10
Helipad or Helipad								C		C	C	
Home Improvement Center							P	C		P		
Home Occupation, Class 1	A	A	A	A	A	A	A	A	A	A	A	2
Home Occupation, Class 2	C	C	C	C	C	C	C	C	C	C	C	2

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

1331.05

PLANNING AND ZONING CODE

110

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Hospital	C	C	C	C		C	P	C		P	C	
Hotel							P	P	P	P		
Hotel, Full-service							P	P	P	P		1
Hypermarket							P			P		
Industrial Equipment Repair Establishment											P	
Industrial Park											P	
Industrial Supplies Establishment											P	
Industry, Heavy											C	32
Industry, Light							C			C	P	9, 10
Instructional Studio		C	C	C		P	P	P		P		28, 29
Junkyard											C	17
Kennel, Commercial						C	P					7
Laboratories									P	P	P	9, 10
Laundromat			C	C		P	P	P		P		28, 29
Liquor Store							P	P		P		
Lodging or Rooming House			C	P			P					
Manufactured Homes	P	P	P	P	P							16
Manufactured Housing Sales											P	
Manufacturing, Heavy											P	32
Marina, Commercial							C	C		C	C	14
Marina, Private							C	C		C	C	14
Medical Cannabis Dispensary							P			P		
Medical Cannabis Growing Facility											P	
Medical Cannabis Processing Facility										P	P	
Marine Supplies Establishment							P			P	P	9, 10
Mixed Use Building			C	P		P	P	P	P	P		20, 26, 28
Motel							P	P		P		
Motorcycle Sales Establishment							P			P		
Movie Theater, Large							P	C		P		
Movie Theater, Small						P	P	P		P		28
Multi-Use Nonresidential Building					C	C		C	P		P	29

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

111

Establishment of Zoning Districts and Zoning Map

1331.05

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Newsstand		C	C	C		P	P	P	P	P		29
Nursery, Plant							P	C		C		
Nursing Home				P			P		P			
Office Building					P	C	P	P	P	P	P	
Office Equipment Repair Establishment							P	P		P	P	4, 9, 10
Office, Medical					P		P	P	P	P		
Office Park									C	P	P	
Office Supplies Establishment						P	P	P	P	P		28
Oil Change Facility							P	P		P	P	
Outdoor Flea Market						C	C	C		C		
Outdoor Storage							C			C	P	
Outdoor Storage, Seasonal							P			P	P	
Park and Recreational Services	C	C	C	P		P	P	P	P			11, 28
Parking Lot, Principal Use				C		P	P	C		P	P	
Parking Structure, Principal Use				C		P	P	C		P	P	28
Passenger Station, Motor Bus, Railroad						C	P	P		P	P	
Pawnshop						P	P	P		P		28
Penal/Correctional Institution											C	
Personal Services Establishment				C	P	P	P	P	C	P		28, 29
Personal Storage Facility							C			C	C	15
Private Club							C			P	P	18
Professional Services Establishment			C	C	P	P	P	P		P		28, 29
Recreation Facility, Commercial, Outdoor						C	P			P		11
Recreational Facility, Commercial, Indoor						C	P			P		11
Recyclable Collection Center/ Solid Waste Transfer Station											P	6
Recycling Center										P	P	
Repair, Small Engine and Motor Shop							P	P		P	P	4, 9, 10

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

1331.05

PLANNING AND ZONING CODE

112

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Research and Development Center									C	P	P	
Restaurant				P		P	P	P	P	P		27, 28, 29
Restaurant with Drive-in							P	P	P	P		
Restaurant, Family			C	P		C	P	P	P	P		28, 29
Restaurant, Fast Food						C	P	P	P	P		22, 25, 27
Restaurant, Private Club						C	P	C		P	P	18, 27
Restaurant, Private Wine						P	P	P		P	P	
Retail Sales Establishment						P	P	P		P		28
Re-use of Closed/Vacant School or Church	C	C	C	C		C	C	C				
Salvage Yard											C	
School (K-12), Private	C	C	C	C		C	P	P		P		
Sexually Oriented Business											C	
Shooting Range, Indoor							C			C	P	
Shopping Center, Large Scale							P			P		
Shopping Center, Medium Scale							P			P		
Shopping Center, Small Scale							P			P		
Snack Bar/Snack Shop				C		P	P	P	A	P		28, 29
Sporting Goods Establishment						C	P	P		P		
Tavern						P	P	P		P	P	21, 28
Taxicab Service							P			P	P	23
Telecommunications Class I	P	P	P	P	P	P	P	P	P	P	P	30

2019 Replacement

# STAFF REPORT ADDENDUM B

## RZ20-04 / Conlon / 424 Evans Street

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Establishment of Zoning Districts and Zoning Map

1331.05

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Telecommunications Class II			P	P		P	P	P	P	P	P	30
Telecommunications Class III						C	C	C		C	C	30
Transient Amusement Enterprise							P			P	P	
Terminal, Truck or Motor Freight											P	
University or College, Private							C	P		P		
Upholstery / Interior Decorating Service							P	P		P		4
Video Gaming / Lottery Establishment											P	13
Veterinary Clinic					C	P	P	P		P		7, 28
Warehousing / Distribution									P		P	21
Wellness Center			C	C	P	C	P	P	P	P		29
Wholesale Establishment									P	P	P	
Wrecker Service							C				P	

(Ord. 06-37. Passed 11-8-06; Ord. 06-48. Passed 12-5-06; Ord. 07-17. Passed 6-5-07; Ord. 07-19. Passed 6-5-07; Ord. 07-20. Passed 6-5-07; Ord. 07-53. Passed 11-6-07; Ord. 09-08. Passed 3-3-09; Ord. 09-16. Passed 5-5-09; Ord. 09-29. Passed 7-7-09; Ord. 11-44. Passed 11-1-11; Ord. 12-27. Passed 7-3-12; Ord. 13-32. Passed 7-2-13; Ord. 16-38. Passed 8-2-16; Ord. 16-43. Passed 9-6-16; Ord. 16-48. Passed 10-4-16; Ord. 17-27. Passed 7-5-17; Ord. 18-14. Passed 4-3-18; Ord. 18-23. Passed 7-10-18; Ord. 18-24. Passed 6-5-18; Ord. 18-29. Passed 10-16-18.)

2019 Replacement

# STAFF REPORT ADDENDUM C

## RZ20-04 / Conlon / 424 Evans Street

### Concurrence with the 2013 Comprehensive Plan Update

The following narrative identifies where, in the opinion of the Planning Division, the subject zoning map amendment petitions are in concurrence and/or are inconsistent with the 2013 Comprehensive Plan Update.

<b>INTENT</b>	Development proposals will reflect the spirit and values expressed in the Plan's principals.
---------------	--

### Principles for Land Management

Principal 1	Infill development and redevelopment of underutilized and/or deteriorating sites takes priority over development in green field locations at the city's edge.	<input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> Other
	<i>The subject premises are located within the Land Management Concept Areas "Neighborhood Revitalization" and "Corridor Enhancement." More intense residential development of the subject premises appears to be consistent with the surrounding residential development patterns. Although extraneous, the zoning amendment would address a nonconforming residential use.</i>	
Principal 2	Expansion of the urban area will occur in a contiguous pattern that favors areas already served by existing infrastructure.	<input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> N/A or Inconclusive
	<i>The subject premises are within the urban area, between the WVU Evansdale and Downtown campuses and appears to be well-served by existing utility and roadway infrastructure.</i>	
Principal 3	Downtown, adjacent neighborhoods and the riverfront will be the primary focus for revitalizations efforts.	<input type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input checked="" type="checkbox"/> N/A or Inconclusive
	<i>The premises is located in the northern portion of the Sunnyside neighborhood.</i>	
Principal 4	Existing neighborhoods throughout the city will be maintained and/or enhanced.	<input type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input checked="" type="checkbox"/> N/A or Inconclusive
	<i>The zoning reclassification of the subject premises to R-3 may adversely impact or present incompatible uses or development densities as opportunity for increased density without new development that substantially alters the built environment is possible.</i>	

# STAFF REPORT ADDENDUM C

## RZ20-04 / Conlon / 424 Evans Street

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Principal 5	Quality design is emphasized for all uses to create an attractive, distinctive public and private realm and promote positive perceptions of the region.	<input type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input checked="" type="checkbox"/> N/A or Inconclusive
	<i>Site and building design are extraneous to the petitioner's zoning map amendment request.</i>	
Principal 6	Development that integrates mixed-uses (residential, commercial, institutional, civic, etc.) and connects with the existing urban fabric is encouraged.	<input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> N/A or Inconclusive
	<i>Mixed-use development patterns are permitted in the OI District, but no other individual parcel residential developments are permitted. The opportunity of more intense residential, nonresidential, and/or mixed-use development of the subject premises appears possible with the R-3, District and would be consistent with the surrounding development patterns.</i>	
Principal 7	Places will be better connected to improve the function of the street network and create more opportunities to walk, bike and access public transportation throughout the region.	<input type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input checked="" type="checkbox"/> N/A or Inconclusive
	<i>The map amendment would not result in any immediate street or pedestrian network improvements.</i>	
Principal 8	A broad range of housing types, price levels and occupancy types will provide desirable living options for a diverse population.	<input checked="" type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input type="checkbox"/> N/A or Inconclusive
	<i>The reclassification of the premises currently zoned OI to R-3 appears to advance more diverse housing types. Specifically, single-family, two-family, townhouses, multi-family dwellings and other residential housing options would be permitted as opposed to only mixed-use dwellings in the OI, District.</i>	
Principal 9	Residential development will support the formation of complete neighborhoods with diverse housing, pedestrian-scaled complete streets, integrated public spaces, connection to adjacent neighborhoods, and access to transportation alternative and basic retail needs.	<input type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input checked="" type="checkbox"/> N/A or Inconclusive
	<i>Site design is extraneous to the petitioner's zoning map amendment request.</i>	
Principal 10	Parks, open space, and recreational areas are incorporated as part of future development.	<input type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input checked="" type="checkbox"/> N/A or Inconclusive
	<i>Site design is extraneous to the petitioner's zoning map amendment request.</i>	

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# STAFF REPORT ADDENDUM C

## RZ20-04 / Conlon / 424 Evans Street

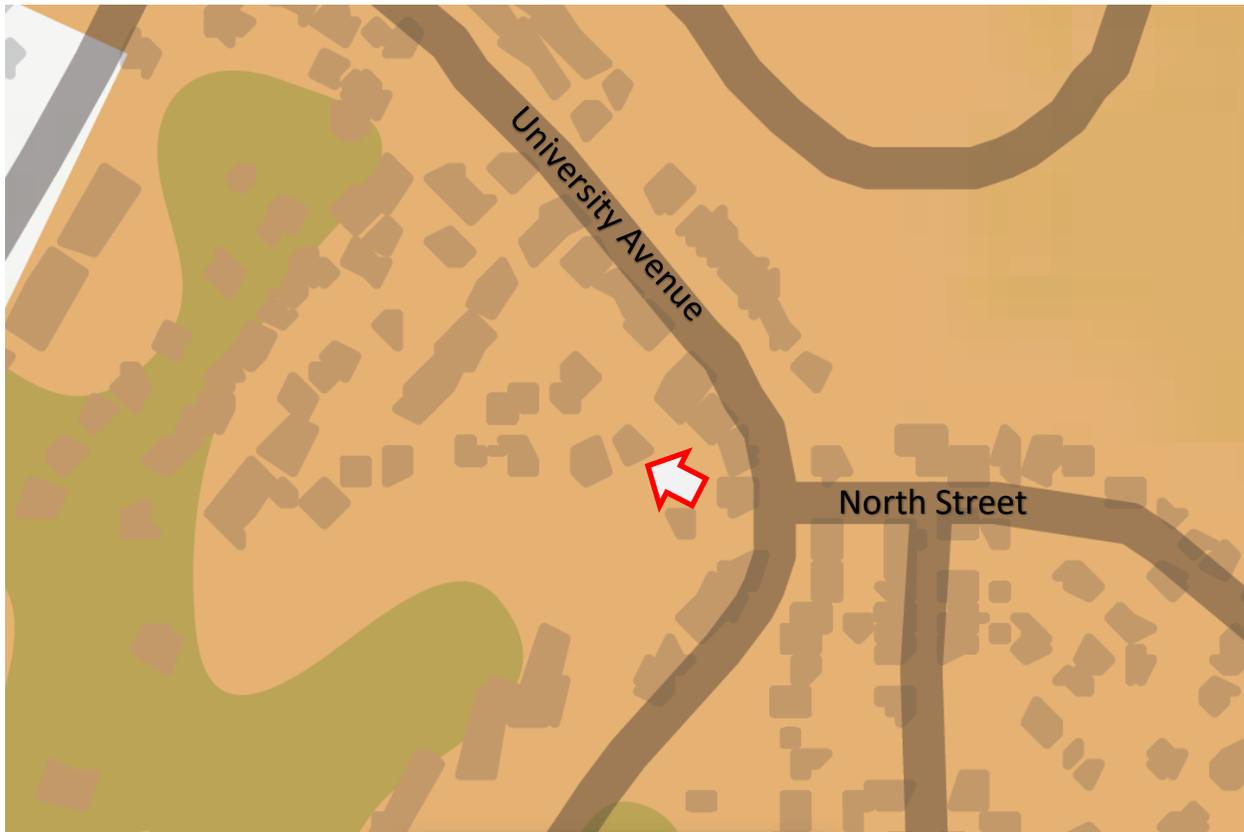
Principal 11	Environmentally sensitive and sustainable practices will be encouraged in future developments.	<input type="checkbox"/> Concurrence <input type="checkbox"/> Inconsistent <input checked="" type="checkbox"/> N/A or Inconclusive
--------------	--	--

*Site design is extraneous to the petitioner's zoning map amendment request.*

### LOCATION

Development proposals will be consistent with the Land Management Map. If the proposal applies to an area intended for growth, infill, revitalization, or redevelopment, then it should be compatible with that intent and with any specific expectations within Areas of Opportunity. If the proposal applies to an area of conservation or preservation, it should be compatible with and work to enhance the existing character of the immediate surroundings.

The following graphic is clipped from the **Conceptual Growth Framework Map** included on Page 19 of the 2013 Comprehensive Plan Update. 424 Evans Street is located within an **"Infill and Redevelopment"** concept area.



Infill and Redevelopment

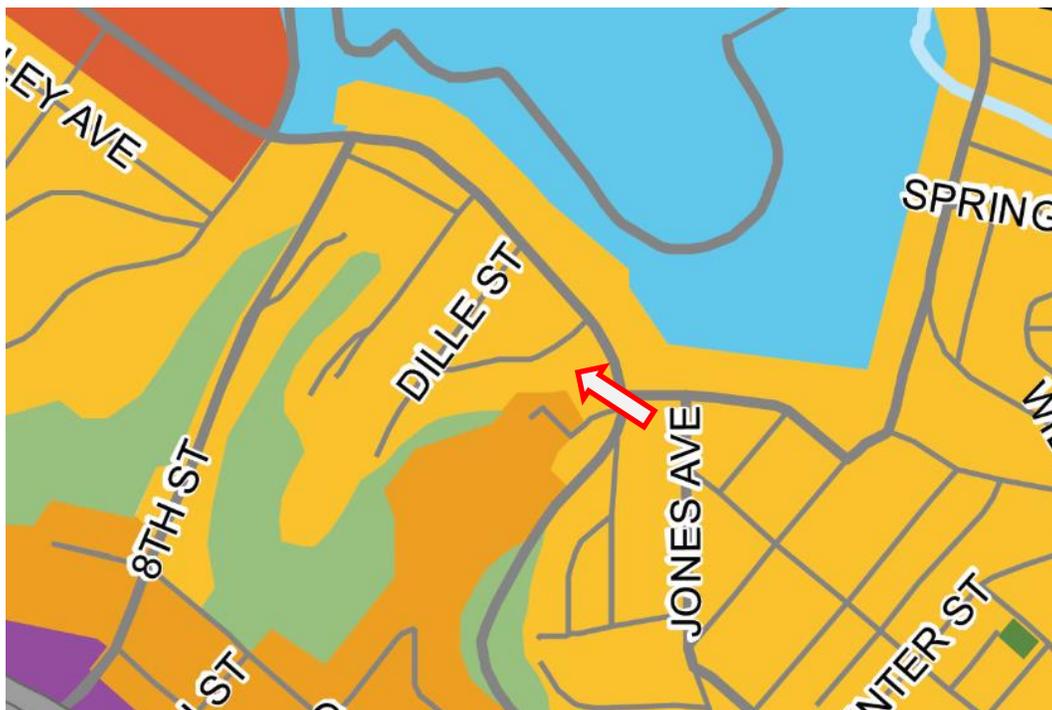
# STAFF REPORT ADDENDUM C

## RZ20-04 / Conlon / 424 Evans Street

### PATTERN AND CHARACTER

Development proposals in growth areas will be consistent with preferred development types. Development in areas where growth is not intended should be compatible with the relevant Character Areas description and expectations for how those areas should evolve in the future.

The graphic below is clipped from **Map 3 – Pattern and Character** included on Page 27 of the 2013 Comprehensive Plan Update. 424 Evans Street is located within the “**Neighborhood 2**” pattern and character area.

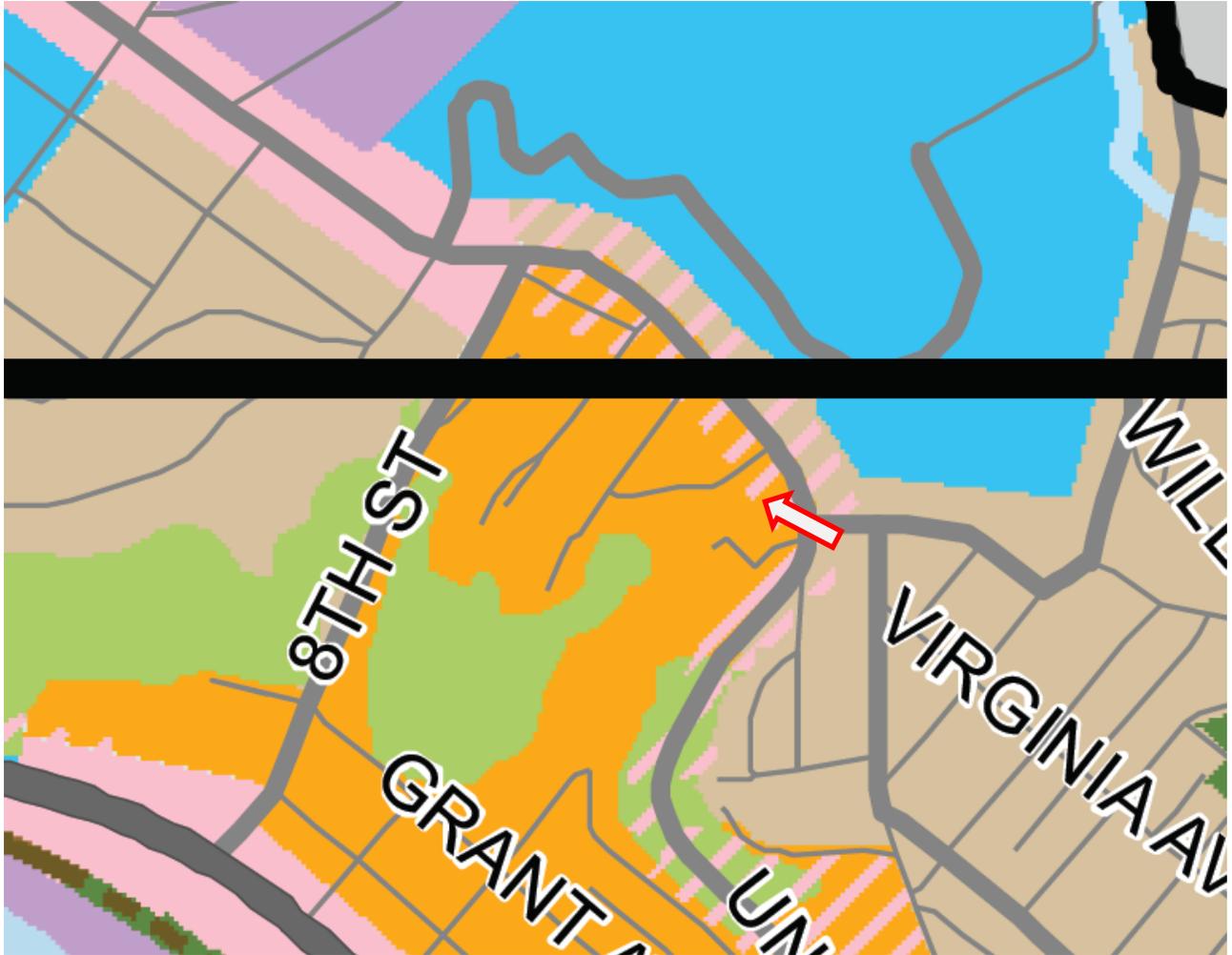


**Neighborhood 2.** Neighborhood 2 is relatively lower density than neighborhood 1 with longer blocks and slightly larger lots. This district is primarily single-family residential but also includes some small-scale multi-family residential and commercial uses. The street pattern is generally a modified grid with more variety of block sizes, but still retaining a high degree of connectivity. The neighborhoods have multiple entry points with walkable access to transit, although many of these areas lack sidewalks. The multi-family buildings are either single-family structures that have been divided into multiple dwellings or small and isolated multi-unit buildings.

# STAFF REPORT ADDENDUM C

## RZ20-04 / Conlon / 424 Evans Street

The graphic below is clipped from **Map 4 – Land Management** included on Page 39 of the the 2013 Comprehensive Plan Update. 424 Evans Street is located within the “**Corridor Enhancement**” and “**Neighborhood Revitalization**” concept areas.



 **Corridor Enhancement\*\*:** Improving development along corridors with a mix of uses, increased intensity at major nodes or intersections and roadway improvements to improve traffic flow, pedestrian and biking experience.

 **Neighborhood Revitalization:** Stabilization and reinvestment in existing neighborhoods that includes improvements to public and private buildings and infrastructure, and support for infill development, adaptive reuse and redevelopment that offers a mix of residential types and supporting uses.

\*\*Hatched areas indicate opportunities for corridor enhancement within another concept area.

# STAFF REPORT ADDENDUM C

## RZ20-04 / Conlon / 424 Evans Street

The following graphics are clipped from Pages 41 through 43 of the 2013 Comprehensive Plan Update and identify the development types desired located within the “**Corridor Enhancement**” and “**Neighborhood Revitalization**” concept areas. Not all development types are permitted in both concept areas.

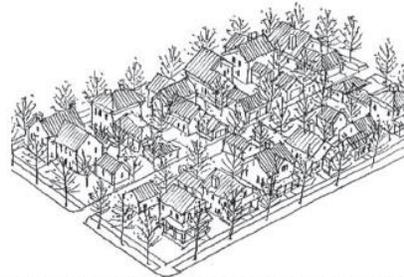
		Appropriate Development Types										
CONCEPT AREA		SF	TF	MF	C	NX	UC	CC	O	I	CD	OS
	Core Enhancement			•	•	•	•					•
	 Corridor Enhancement*			•	•	•		•	•			•
	 WVU Campus Development		•	•	•	•	•		•	•		•
	 Neighborhood Revitalization	•	•	•	•	•						•
	 Infill and Redevelopment*			•	•	•	•		•			•
	 Encouraged Growth			•	•	•	•		•	•		•
	 Controlled Growth	•	•	•	•	•			•	•	•	•
	 Neighborhood Conservation*	•	○	○	•							•
	 Limited Growth	•			•						•	•
	 Preserve											•
	 Reserve											•

### DEVELOPMENT TYPE DESCRIPTIONS

### PATTERN AND CHARACTER EXAMPLES

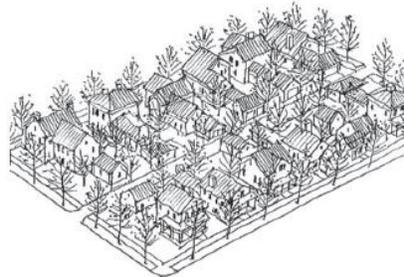
#### SF **Single Family Residential**

Detached 1-2.5 story residential structures each intended for one family. Densities range from six to twelve units per acre.



#### TF **Two Family Residential**

Detached structures that each contain two separate residential dwellings and townhouse dwelling types. May be built in a similar pattern as single-family structures and integrated in neighborhoods with other single-family structures and/or at the edge of single-family neighborhoods. Densities range from six to twenty units per acre.



#### MF **Multi-family Residential**

Includes various forms such as apartment buildings where three or more separate residential dwelling units are contained with a structure and townhouse dwelling types. They vary considerably in form and density depending on the context – from four-story or larger buildings set close to the street in and at the edge of the downtown core and along major corridors, to smaller two- to four-story buildings with greater street setbacks in areas between the downtown core and single-family neighborhoods.



# STAFF REPORT ADDENDUM C

## RZ20-04 / Conlon / 424 Evans Street

### DEVELOPMENT TYPE DESCRIPTIONS

### PATTERN AND CHARACTER EXAMPLES

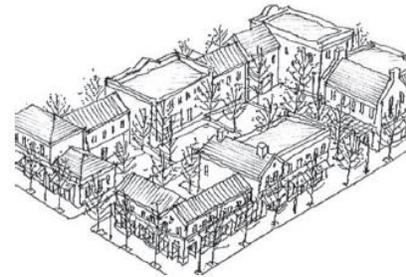
**C Civic and Institutional**

These sites include both public uses (government buildings, libraries, community recreation centers, police and fire stations, and schools) and semi-public or private uses (universities, churches, hospital campuses). Public uses should be strategically located and integrated with surrounding development. Civic and Institutional sites may be distinctive from surrounding buildings in their architecture or relationship to the street.



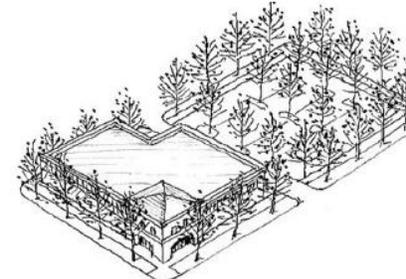
**NX Neighborhood Center Mixed-Use**

A mix of housing, office, commercial, and civic uses adjacent to one another or contained within the same structure (such as offices or apartments above ground-floor retail). Such uses should be compatible with and primarily serve nearby neighborhoods (within 1/2 mile). Parking should be located behind or to the side of buildings and may be shared between multiple uses.



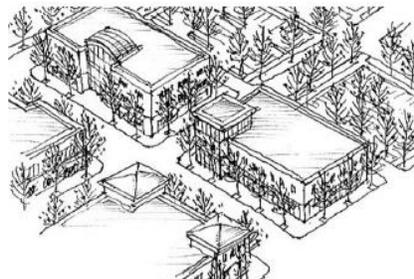
**CC Community Commercial**

Larger scale, primarily retail, restaurant and accommodation uses that serve the broader community. Buildings should be located close to the street with parking to the rear or side and should be well-connected to surrounding development and pedestrian infrastructure.



**O Office / Research**

Larger-scale 2-6 story buildings generally housing professional offices or research/development activities with single or multiple tenants. May involve multiple large-scale buildings in a campus setting, but buildings should be in a walkable configuration with shared parking typically behind or to the side. Supportive retail establishments may occupy the lower levels of a multistory building. Supportive retail uses include coffee shops, delicatessens, barbers, and bookstores among others.



**OS Greenspace**

Includes formal parks, recreation areas, trails, and natural open space.



# STAFF REPORT ADDENDUM C

## RZ20-04 / Conlon / 424 Evans Street

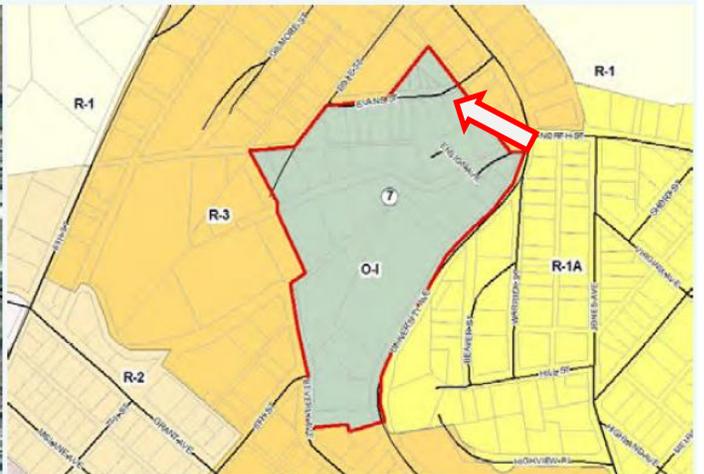
### FUTURE STUDY AREAS

Future Study Areas are places where the existing zoning does not align with the existing land uses or the existing pattern of development. It may also be an area where the existing zoning is not compatible with, or does not fully support the desired future of the area as indicated in the Comprehensive Plan's Land Management Map. These areas require further land use and development study by the Planning Commission to enable zoning map amendment and/or zoning text amendment recommendations to City Council that will advance the goals, objectives, strategies, and consistency principals of the Comprehensive Plan.

7 O-1 University Avenue, Sixth Street, Dille Street ***Current office and institutional zoning does not reflect existing uses, existing development pattern, or future potential.***

#### Considerations for future study:

- Consider zoning reclassifications that allow for higher residential density patterns.
- Provide incentives to assemble and consolidate realty.
- Discourage continued added density of converted single-family dwellings.
- Establish appropriate design standards
- Improve infrastructure supporting higher densities including sidewalks, pedestrian crossings, streetscape enhancements; public open space; increased supply of on-site parking;
- Consider the expansion of Sunnyside Overlay Districts.



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# MORGANTOWN PLANNING COMMISSION

October 8, 2020  
6:30 p.m.  
By Electronic Means

**President:**

Peter DeMasters, 6<sup>th</sup> Ward

**Vice-President:**

Carol Pyles, 7<sup>th</sup> Ward

**Planning Commissioners:**

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AJ Hammond, City Admin.

**CASE NO:** TX20-04 / Bucklew / Permitted Land Uses

**REQUEST:**

A request by Robert Bucklew to amend Sections 1329.02 and 1331.06(13) and Permitted Land Uses Table 1331.05.01 so that "Video Gaming or Lottery Establishment" uses are permitted either by-right or by conditional use approval in the B-2, Service Business District.

**BACKGROUND:**

The petitioner owns property commonly known as 100 East Brockway Street (Tax District 10, Tax Map 35, Parcels 36, 37, and 38). This property was the location of the former "Buck's Place," which was both a legal pre-existing nonconforming "Private Club" and "Video Gaming or Lottery Establishment" in addition to structure nonconformities. The principal building for "Buck's Place" was destroyed by a fire on September 28, 2015. The subject property was not re-built in accordance with Article 1373 Nonconforming Provisions of the Planning and Zoning Code and the use for the property was abandoned.

The petitioner seeks a text amendment to the Planning and Zoning Code Permitted Land Uses Table, to allow for "Video Gaming or Lottery Establishment" in the B-2, Service Business District. Currently, "Video Gaming or Lottery Establishment" uses are only permitted in the I-1, Industrial District and with the following supplemental conditions as provided in Section 1331.06(13):

(13) VIDEO GAMING OR LOTTERY ESTABLISHMENTS shall comply with the following conditions:

- (a) May locate no closer than 500 feet from another video gaming or lottery establishment. Proof that the establishment meets this distancing requirement shall be submitted by the applicant to the Planning Director in a form approved by the Planning Director.
- (b) May locate no closer than 500 feet from a place of worship, school, hospital, nursing home, assisted living facility and residential uses of all types. Proof that the establishment meets this distancing requirement shall be submitted by the applicant to the Planning Director in a form approved by the Planning Director.  
(Amended by Ord. 06-14, Passed 06-06-2006.)
- (c) Subject to all applicable zoning regulations including parking, signage, landscaping, etc.
- (d) Subject to all applicable State regulations.
- (e) The 500 foot buffer provided in paragraphs (a) and (b) above shall be measured as the shortest distance between any portion of both buildings.  
(Amended by Ord. 06-14, Passed 06-06-2006.)
- (f) For the purpose of paragraph (b) above, a place of worship shall be defined as an institution which qualifies as tax exempt under the provisions of 26 U.S.C. §501(c)(3), within which weekly religious services are offered to the congregation and/or the general public. (Amended by Ord. 06-14, Passed 06-06-2006.)

**Development Services**

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The "Video Gaming or Lottery Establishment" use is defined in Section 1329.02 of the Planning and Zoning Code thusly.

**VIDEO GAMING or LOTTERY** – A lottery that allows a game to be played utilizing an electronic computer and an interactive terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins or currency as consideration in order for play to be available, and through which terminal device, the player may receive free games or a voucher that can be redeemed for a cash or non-cash prize, or nothing, determined wholly or predominantly by chance. "Video lottery" does not include a lottery game that merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results of the game and which does not utilize an interactive electronic terminal device allowing input by one or more players. Video gaming or lottery shall be regulated in accordance with all applicable State and other regulations.

**VIDEO GAMING or LOTTERY ESTABLISHMENT** – An establishment at which any form of gambling of chance is permitted or played, including "video lottery" machines licensed by the West Virginia Lottery Commission pursuant to Chapter 29, Article 22B of the Code of West Virginia, but excluding establishments that only sell lottery tickets. Such establishments are permitted only in industrial zoning districts, and shall be subject to the same parking requirements as a food service establishment.

**ANALYSIS:**

*Limited Video Lottery*

West Virginia State Code Chapter 29, Article 22B Limited Video Lottery, provides requirements for the operation of The West Virginia Lottery's Limited Video Lottery system. Limited Video Lottery is considered by the Development Services Department as the "Video Gaming or Lottery Establishment" use. Limited Video Lottery retailers are restricted state-wide to those locations that have a private club license (an establishment that sells liquor for on-premise consumption) or in limited instances a restaurant location that has at least forty-percent (40%) annual gross sales of non-intoxicating beer (also known as beer) of which eighty-percent (80%) is consumed on site [§29-22B-328(a)]. Any establishment that sells petroleum products in conjunction with other retail products that is not an Authorized West Virginia Truck Stop is not permitted to operate a Limited Video Lottery [§29-22B-328(b) and Legislative Rule Title 179 Series 5 as amended in 2017].

Limited Video Lottery retailers are permitted to install up to seven (7) Limited Video Lottery machines as of 2017. The location of the machine is regulated to a separate room if persons under the age of twenty-one (21) are permitted into the establishment. ATM machines are not permitted to be in the same room as a Limited Video Lottery Machine. Retailers are not permitted to provide incentives or advertising for patrons who only use Limited Video Lottery machines on-site.

A Limited Video Lottery machine is different than a traditional slot machine that one would experience at a casino. A Limited Video Lottery machine is functionally a graphic interface where the player selects games of chance that are regulated by a random number generator. Games include slot styled games of chance, card games, and Keno. A slot

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machine is typically a device that incorporates reels that move in a randomized setting. Both machine types can use images, lights, and sounds to provide the patron with sensory stimulation in addition to the sensation from the act of gambling. Examples of both machines are provided below:



Traditional Slot Machine



Limited Video Lottery Machine

*City of Morgantown Land-Uses*

Limited Video Lottery Retailers are required to sell certain types of alcohol for licensure. The City of Morgantown’s Planning and Zoning Code recognizes four (4) land uses that permit the sale and on-premise consumption of liquor or beer. These uses are “Private Club;” “Restaurant, Private Club;” “Restaurant, Private Wine;” and “Tavern.” These uses are defined below:

**PRIVATE CLUB** – Any corporation or unincorporated association meeting the definition of private club as contained and utilized within the Code of West Virginia Chapter 60, Article 7, Section 1 et seq. as the same applies to licensing for sale of alcoholic liquor. These establishments are permitted to sell liquor, beer and wine.

**RESTAURANT, PRIVATE CLUB** – A restaurant that also dispenses liquor and has been issued a license by the West Virginia Alcohol and Beverage Control Agency.

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**RESTAURANT, PRIVATE WINE** – A restaurant that is licensed to sell beer and wine, but no liquor, and that sells at least \$2500 worth of food each month, as stated in West Virginia State Law.

**TAVERN** – A place licensed to sell only beer and wine, but no liquor. Food may or may not be served. Taverns are allowed in all districts except residential and office districts.

The following land-use table shows which zoning districts these and “Video Gaming or Lottery Establishment” uses are permitted in the City of Morgantown.

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
Private Club							C			P	P	18
Restaurant, Private Club						C	P	C		P	P	18, 27
Restaurant, Private Wine						P	P	P		P	P	
Tavern						P	P	P		P	P	21, 28
Video Gaming / Lottery Establishment											P	13

The following supplemental regulation is related to “Private Club” and Restaurant, Private Club uses:

(18) When reviewing new or the expansion of existing conditional use PRIVATE CLUB applications, the Board of Zoning Appeals shall consider potential adverse impacts on surrounding residential properties such as, but not limited to, the arrangement and use of outdoor seating areas, hours of wine and liquor sales, noise, etc.  
 (Ord. 07-20. Passed 6-5-07.)

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Supplemental Regulation 21 relates to “Warehousing/Distribution Facility” uses which may be related to “Tavern” uses given the flexibility available to taverns:

(21) Except no WAREHOUSING/DISTRIBUTION FACILITY of any type shall be located within 300 feet of any property line of any residential district.  
 (Ord. 07-53. Passed 11-6-07.)

Supplemental Regulation 27 relates to nonconforming “Private Club” and “Restaurant Private Club” uses in the B-1, Neighborhood Business District and B-4, General Business District. Supplemental Regulation 28 relates to B-1, District development standards.



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It should be noted that these four (4) on-premise alcoholic beverage consumption uses may also be associated with “Hotel, Full-Service” or incorporated into “Shopping Center” or “Multi-Use Nonresidential Building” uses.

*Comparative Analysis of the B-2 and I-1 Zoning Districts*

The petitioner is seeking to allow a more intensive land-use in the B-2, Service Business District. The “Video Gaming or Lottery Establishment” use is currently permitted in the I-1, Industrial District. The purpose of the I-1, District is provided in Section 1355.01 of the Planning and Zoning Code as follows:

**1355.01 PURPOSE.**  
The purpose of the Industrial District (I-1) is to allow for the development of research and industrial parks, wholesale business, manufacturing and the like while ensuring the health and safety of Morgantown residents. Industrial districts are intended to be located on major thoroughfares where truck traffic does not disrupt local streets.  
(Ord. 12-29. Passed 7-3-12.)

The purpose of the B-2, District is provided in Section 1347.01 of the Planning and Zoning Code as follows:

**1347.01 PURPOSE.**  
The purpose of the Service Business (B-2) District is to provide areas that are appropriate for most kinds of businesses and services, particularly large space users such as department stores. Typically B-2 districts are located along major thoroughfares.

Both zoning districts are to be located on major thoroughfares and provide for commercial activities within the City of Morgantown. The B-2, District is to be an area for many different types of businesses. The I-1, District is for land uses that create nuisances including but not limited to increased vehicular traffic, pollution, noxious odors, hazardous conditions, and/or visual disturbance as compared to other areas of the city. The I-1, District is not limited to only light or heavy industrial uses. Many uses permitted in the B-2, District are also permitted in the I-1, District. The following land-uses are exclusively permitted in the I-1, District:

Consumer Fireworks Wholesale Establishment; Distribution Center; Extractive Industry; Fairgrounds; Industrial Equipment Repair Establishment; Industrial Park; Industrial Supplies Establishment; Manufactured Housing Sales; Heavy Manufacturing; Medical Cannabis Growing Facility; Recyclable Collection Center/ Solid Waste Transfer Station; Truck or Motor Freight Terminal; and Video Gaming or Lotter Establishment uses.

The following uses are exclusively allowed in the I-1, District and also require conditional-use approval:

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Airport; Heavy Industry; Penal/Correctional Institution; Salvage Yard; and Sexually Oriented Business uses.

*Mobile Device Gambling*

When studying highest and best land uses within the B-2 District, Staff recommends the Planning Commission consider the relationship of the "Video Gaming or Lottery Establishment" use in the context of more recent developments in technology and the legal status of gambling using a smartphone or other online terminal. There are currently three sportsbooks operational in the State of West Virginia. These are *DraftKings* operating from Hollywood Casino at Charles Town and both *FanDuel* and *BetMGM* operating from The Greenbrier. Mardi Gras and Wheeling Island casino sportsbooks were suspended in March of 2019 and Mountaineer Casino is anticipated to enter the marketplace. In addition to sports betting, these applications also include virtual table games including roulette, card games, keno, and slot machine styled games of chance.

The atmosphere and style of play using a smartphone is different than a traditional Limited Video Lottery machine. A limited Video Lottery machine is strictly occurring in a location that sells alcohol and has heightened sensory application given the size of the machine. The machine itself is designed solely for gambling. It should be noted that with online sportsbooks, there is no practical way to limit mobile or online gambling in a specific location in the City of Morgantown. However, staff wishes to convey that while the act of gambling can occur anywhere in the city, the physical infrastructure and patron experience related to Limited Video Lottery gambling is unique.

**STAFF RECOMMENDATION:**

In reviewing the petition, staff is concerned that the proposed change to the Planning and Zoning Code increasing Limited Video Lottery locations within the City of Morgantown may negatively impact the city's commercial corridors and residential neighborhoods. The land-use as established by the State of West Virginia, is directly tied to the on-premise consumption of alcoholic beverages. The City of Morgantown has historically regulated the presence of Private Clubs with multiple attempts made in the past forty years to limit their proliferation within the Downtown and Sunnyside neighborhood. From an individual economic perspective, the addition of Limited Video Lottery would be an expected component for those existing and future on-premise alcoholic beverage consumption establishments in the B-2, District.

The Planning Commission should evaluate the physical land development pattern associated with the "Video Gaming or Lottery Establishment" use. Land-use trends related to "Video Gaming or Lottery Establishment" within the state of West Virginia often focus solely on the gambling activity. Page 7 of this report provide Google Streetview Images of examples of existing nonconforming single-occupancy structures with "Video Gaming or Lottery Establishment" uses in the B-2, Service Business District employing or *Hot Spot* branding (via Google keyword search) in Morgantown. Additional locations are located in "Shopping Centers, Small-Scale" use structures.

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There is currently no Planning and Zoning Code method available to limit further development of single-story single-occupant structures in the B-2, Service Business District. Staff believes it is not unreasonable to expect further development of similar structures in the B-2, Service Business District if this zoning text amendment is approved. This development pattern is inconsistent with “Corridor Enhancement” areas provided in the City of Morgantown 2013 Comprehensive Plan Update’s Land Management Map. The “Corridor Enhancement” areas are planned in the vicinity of B-2, Service Business District locations along major traffic corridors, and call for increased development intensity.

In reviewing the current Permitted Land Use Table, staff does not see a situation where the land-use is unreasonably regulated. The current land-use designation, allowing for “Video Gaming or Lottery Establishment” uses only in the I-1, Industrial District is not the most restrictive business styled use within the City of Morgantown. “Sexually Oriented Business” uses are regulated as requiring conditional-use approval by default, with



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additional restrictions included in the Supplemental Regulations section of the Planning and Zoning Code. A “Sexually Oriented Business” is an establishment that provides the sale and display of pornographic material. While clearly not the same land-uses, both uses only cater to adult individuals who engage in state and federally regulated activities and create phenomena that has historically had negative connotations.

In completing this report, staff did observe a potential issue with the definition of “Video Gaming or Lottery Establishment.” Staff recommends the following text amendment (deleted matter struck-through; new matter underlined), as the current definition does not appear to be practical given mobile device gambling as and further only provides duplicated information that is provided in Section 1331.01.05 for permitted land uses and Section 1365.04 for minimum parking standards:

~~VIDEO GAMING or LOTTERY ESTABLISHMENT – An establishment at which any form of gambling of chance is permitted or played, including~~ “video lottery” machines licensed by the West Virginia Lottery Commission pursuant to Chapter 29, Article 22B of the Code of West Virginia are operated, but excluding establishments that only sell lottery tickets. Such establishments are permitted only in industrial zoning districts, and shall be subject to the same parking requirements as a food service establishment.

In the event that the Planning Commission considers approval for this petition, staff recommends that the Planning Commission provide said recommendation of approval to with the following conditions to the City Council to ensure that nearby service business land uses and commercial districts are promoted to the best extent possible:

First, that the definition for “Video Gaming or Lottery Establishment” be amended as follows (deleted matter struck-through; new matter underlined):

~~VIDEO GAMING or LOTTERY ESTABLISHMENT – An establishment at which any form of gambling of chance is permitted or played, including~~ “video lottery” machines licensed by the West Virginia Lottery Commission pursuant to Chapter 29, Article 22B of the Code of West Virginia are operated, but excluding establishments that only sell lottery tickets. ~~Such establishments are permitted only in industrial zoning districts, and shall be subject to the same parking requirements as a food service establishment.~~

Second, that the Permitted Land-Use table be amended as follows (new matter highlighted and underlined):

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
<u>Video Gaming / Lottery Establishment</u>							<u>C</u>				P	13

And finally, that Supplemental Regulation 13 [1331.06(13)] be amended to include the following regulation (new matter underlined):

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(g) Video Gaming or Lottery Establishments shall only be permitted in the B-2, Service Business District if the Video Gaming or Lottery Establishment is associated with a bona fide Restaurant, Private Club use or Restaurant, Private Wine use. For the purposes of this section, a Restaurant, Private Club use shall include the requirement that food and non-alcoholic beverages shall comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month. In addition, both Restaurant, Private Club uses or Restaurant, Private Wine uses shall be required to have the following conditions:

- (i) The establishment shall provide a seating capacity for at least fifty (50) persons, at a table or counter maintained for the principal purpose of serving meals. Seats at a bar, which is primarily for the serving of alcoholic beverages, shall not be counted as meeting the minimum seating capacity of the establishment.
- (ii) Liquor or wine shall not be served later than 1:00 a.m., except on New Year's Eve.
- (iii) That Limited Video Lottery or similar machines shall be located in a separate room from the main dining area.
- (iv) That occupancy of the establishment shall not be restricted to persons under the age of 21.

Development Services staff believe that these text amendments should permit the "Video Gaming or Lottery Establishment" use in a more favorable manner and will not excessively harm other nearby B-2, District land-uses or the wider Morgantown community. These regulations would effectively require the establishment to operate as a restaurant as opposed to a "Private Club" or "Tavern" catering to those individuals who are primarily engaged in on-premise gambling. Staff believes this may ensure that single-occupancy structures like *Hot Spot* branded facilities would not occur in the B-2, Service Business District.

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